

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922

No. 500.

ARKANSAS NATURAL GAS COMPANY, APPELLANT,

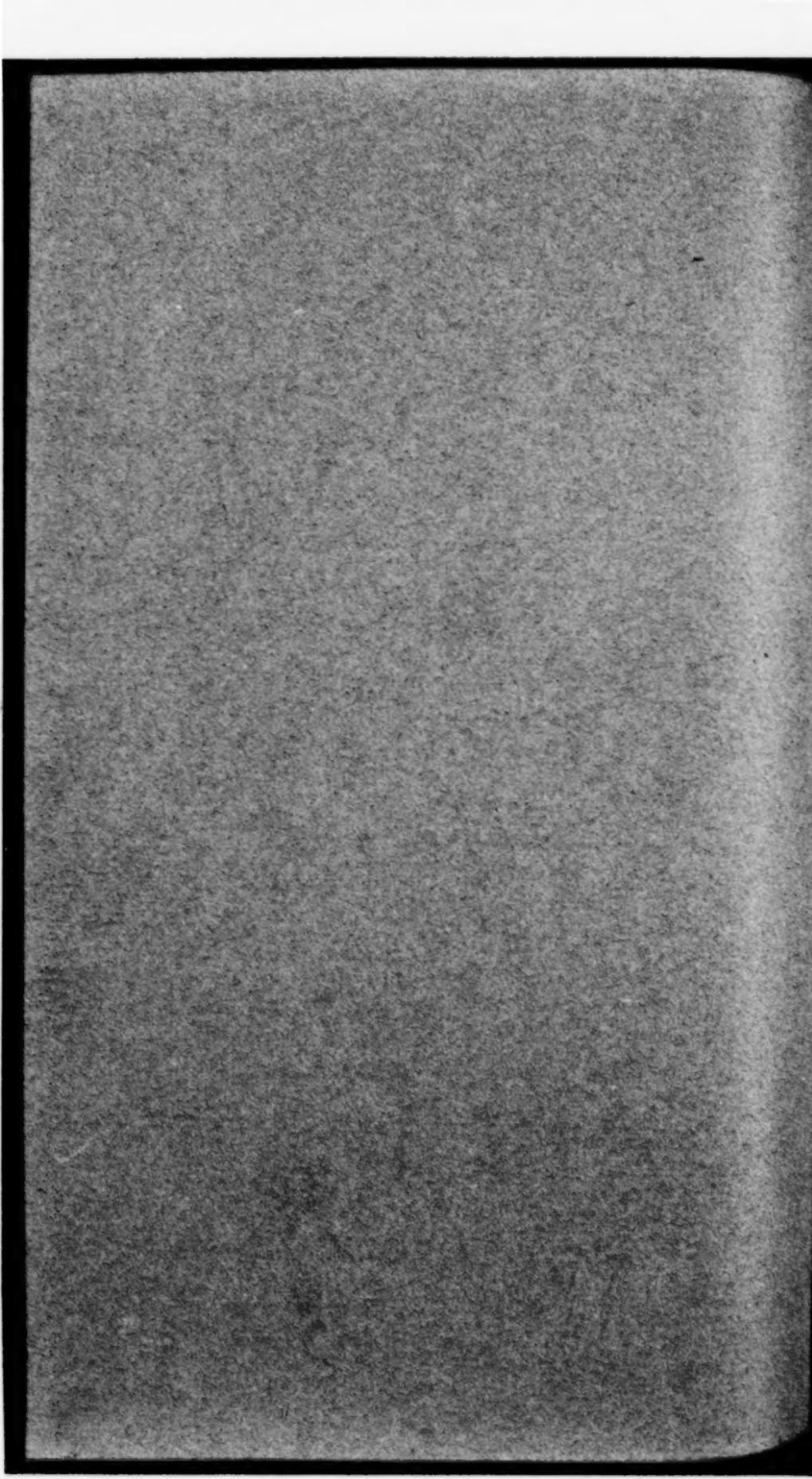
vs.

**ARKANSAS RAILROAD COMMISSION, CITY OF PINE
BLUFF, TOWN OF SHERIDAN, ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ARKANSAS.**

RECEIVED JULY 25, 1922.

(192,000)



(29,050)

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BLUFF, TOWN OF SHERIDAN, ET AL.

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THE EASTERN DISTRICT OF ARKANSAS.

INDEX.

	Original.	Print.
Record from the district court of the United States for the eastern district of Arkansas.....	1	1
Bill of complaint.....	1	1
Exhibit A—Certificate of indeterminate permit, case No. 435, Arkansas Corporation Commis- sion	80	34
B—Agreement between Arkansas Natural Gas Co. and Pulaski Gas Light Co., February 16, 1910.....	82	35
B-1—Idem., February 19, 1910.....	91	42
C—Memorandum of agreement between Pu- laski Gas Light Co. and Arkansas Natural Gas Co.....	93	43
D—Ordinance amending ordinance 392 of City of Little Rock, Ark.....	96	45
E—Contract between Business Men's League of Little Rock and Pulaski Gas Light Co.	101	48
F—Memorandum agreement between Arkansas Natural Gas Co. and Pulaski Gas Light Co.	104	50
G—Contract between Arkansas Natural Gas Co. and Hot Springs Gas Co.....	108	53
H—Contract between Arkansas Natural Gas Co. <i>et al.</i> and Benedum <i>et al.</i>	122	63
I—Idem., September 12, 1914.....	132	70

INDEX.

	Original.	Print
Exhibit J—Map of natural gas property of Arkansas Natural Gas Co. in Louisiana and Arkansas	133a	71
Response of Arkansas Railroad Commission.....	134	72
Answer of Arkansas Railroad Commission.....	151	82
Response of Little Rock Gas and Fuel Co.....	152	82
Answer of Little Rock Gas and Fuel Co.....	153	83
Exhibit A—Amendment to contract between Business Men's League and Pulaski Gas Light Co.....	166	90
Response of Consumers' Gas Co.....	168	92
Order of submission.....	178	97
Order	180	99
Order allowing appeal.....	183	100
Statement of evidence.....	184	101
Testimony of C. W. Kramer.....	185	101
Exhibit A—Statement of unit costs of various materials	187	103
B—Statement of reproduction costs as of January 1, 1922.....	196	116
C—Valuation of property.....	200	121
Testimony of E. J. Cole.....	234	134
Exhibit A—Comparative statements of earnings and expenses.....	235	135
B—Estimate of earnings and expenses for 1922.....	236	139
C—Estimate of net operating revenues.....	237	140
D—Gas investment.....	238	141
E—Depreciation charges for 1921.....	239	141
F—Well drilling costs.....	240	142
G—Gas wells abandoned.....	241	143
H—Number of producing gas wells.....	242	143
Testimony of J. K. Anderson.....	253	150
Exhibit A—Report of required gas rates.....	255	151
Testimony of A. B. Dally, Jr.....	292	171
Testimony of W. T. Fields.....	296	173
Exhibit A—Blue-print of comparative values.....	297	174
Exhibit B—Property valuation.....	298	175
Testimony of Roy E. Chase.....	310	185
Exhibit A—Report of investigation of Arkansas Natural Gas Co.....	311	186
Testimony of J. A. Whitlow.....	358	249
Exhibit No. 1—Table of values.....	366	255
Order settling statement of evidence.....	368	257
Order allowing appeal.....	370	257
Assignment of errors.....	371	258
Petition for appeal.....	376	261
Order approving bond.....	377	261
Bond on appeal.....	378	262
Præcipe for transcript.....	380	263
Clerk's certificate to opinion.....	381	264
Citation and service.....	382	265
Clerk's certificate.....	383	266

a Filed Feb. 18, 1922. Sid B. Redding, Clerk, by — —,
D. C.

In the United States District Court for the Western Division of the
Eastern District of Arkansas.

#2062.

ARKANSAS NATURAL GAS COMPANY, Complainant,
v.

ARKANSAS RAILROAD COMMISSION et al., Defendants.

Bill of Complaint.

Moore, Smith, Moore & Trieber,
W. B. Smith,
Attorneys for Complainant.

Weller & Wicks,
Of Counsel.

1 In the United States District Court for the Western Division
of the Eastern District of Arkansas.

ARKANSAS NATURAL GAS COMPANY, Complainant,
vs.

ARKANSAS RAILROAD COMMISSION, CITY OF PINE BLUFF, TOWN OF
Sheridan, Town of Alexander, City of Benton, Town of Haskell,
City of Malvern, City of Arkadelphia, Town of Gurdon, City of
Prescott, Town of Emmett, City of Hope, Town of Garland, Town
of Fouke, Town of Traskwood, Little Rock Gas & Fuel Company,
and Consumers' Gas Company, Defendants.

Bill of Complaint.

Complainant, the Arkansas Natural Gas Company, for cause of
action against the defendants alleges as follows:

2

I.

(a) Complainant is a corporation duly organized and existing
under the laws of the State of Delaware and is engaged as a public
utility in the business of producing and supplying natural gas to the
defendants, City of Pine Bluff, Town of Sheridan, Town of
Alexander, City of Benton, Town of Haskell, City of Malvern, City
of Arkadelphia, Town of Gurdon, City of Prescott, Town of Emmett,
City of Hope, Town of Garland, Town of Fouke, Town of Trask-

wood, and to its patrons and consumers in the aforesaid cities and towns; to the Defendants, Little Rock Gas & Fuel Company and Consumers' Gas Company; and to its patrons and consumers in the unincorporated towns of Mabelvale, Bryant, Bauxite, Gifford, Perla, Donaldson, Gum Springs, Boughton, Bierne and Doddridge, all in the State of Arkansas: That it is now, and was at the time of the events herein complained of, a citizen and resident of the State of Delaware.

(b) That the defendants, and each of them, are now, and at the time of the events herein complained of were, citizens and residents of the State of Arkansas; that the Defendants, City of Pine Bluff, Town of Sheridan, Town of Alexander, City of Benton, Town of Haskell, City of Malvern, City of Arkadelphia and Town of Gurdon, and the defendants, Arkansas Railroad Commission, Little Rock Gas & Fuel Company and Consumers' Gas Company, are residents of the Western Division of the Eastern District of Arkansas; that the remaining defendants are citizens and residents of the State of Arkansas and of the Texarkana Division of the Western District of Arkansas. The cities and towns made defendants herein are now, and at all times hereinafter mentioned were, municipal corporations created and existing under the laws of the State of Arkansas.

The defendant, Arkansas Railroad Commission, is a quasi-public corporation created by Act 124 of the Legislature of 1921, approved February 15th, 1921, and by that name the Commission may sue and be sued. The said defendant is the public body to which is delegated the authority to make rates and regulations for public utility companies over which it has jurisdiction, under the terms of said Act, engaged in the public utility business in Arkansas, as hereinafter more in detail set forth.

(c) Complainant says that this action is one of a civil nature and is a suit in equity involving a federal question, and presents a special controversy under Amendment Numbered Fourteen to the Constitution of the United States, and that the matter in controversy herein exceeds the sum of Three Thousand Dollars, exclusive of interest and costs, as hereinafter more particularly appearing, and is a suit in equity between complainant, a resident and citizen of Delaware, and the defendants, each of whom is a citizen and resident of Arkansas, and of the Districts hereinbefore particularly set out.

(d) Complainant alleges that it is engaged in the business of producing and distributing natural gas for public and private use in the cities and towns aforesaid and to the defendants, Little Rock Gas & Fuel Company and Consumers' Gas Company, and that it operates its said gas plants and distributing mains within the limits of the aforesaid municipalities under an Indeterminate Permit granted to it on the 24th day of January, 1921, by the Corporation Commission of Arkansas, the body of which, under the provisions of Act Numbered 571 of the Acts of the General Assembly of Arkansas

for the year 1919, had the power and authority to grant such permit, and that it owns and operates said natural gas plants and system subject to all the terms, conditions and limitations prescribed in said Act Numbered 571. A copy of said permit is herewith filed, marked, "Exhibit A" and asked to be taken as part of this complaint.

II.

That in the years 1905, '06 and '07 drilling operations in prospecting for oil were conducted in northwest Louisiana, in that part of the Caddo Parish known as the "Vivian District," and in the territory immediately south of the Vivian District, in the vicinity of Oil City. In the course of these operations a gas sand was struck known as the "Nacatoeh" sand, from which sand were produced large quantities of gas. In 1909 ten producing wells had been brought in, capped and put under control, which wells had an open flow capacity of approximately 300,000,000 cubic feet per day. Complainant purchased these gas wells and a large area of gas leases and gas rights in the Caddo Parish, and in the northeastern part of Texas, adjacent to the Caddo Parish, paying therefor by an issue of five million five hundred thousand dollars par value of its common stock. In the exploration operations, oil had also been discovered in another sand formation in said district. The oil and gas rights were owned by the same parties. Complainant's contract for the purchase of the gas rights, gave it the privilege of acquiring from the owners of the oil rights any and all gas wells that might be brought in by the said owners in the course of their prospecting for oil, upon the payment by complainant of the actual cost of drilling the wells and the cost of rigging, casing and other material and equipment connected with the wells. Thus complain-

6 ant, in acquiring the gas wells and gas rights in the Caddo Parish, for which it issued its common capital stock as afore-

said, protected itself in the control for its own use of all the gas that might be developed upon the lands covered by the leases and gas rights so acquired by it. These rights were acquired by complainant in the month of October, 1909, and at said time, as well as during the years 1910 and 1911, on the dates hereinafter set forth in said years, there was no other known gas development in Louisiana than the development in the aforesaid area known as the Vivian and Oil City Districts of the Caddo Parish. At the time complainant acquired the gas rights aforesaid there had been developed in a deeper sand known as the "Woodbine" sand, a very large gas-producing well, the open flow of which was approximately forty million cubic feet per day and which had a very high rock pressure.

It was the opinion of the best gas experts and geologists in the country that the natural gas supply in the aforesaid area was practically inexhaustible, and, if commercialized by the building of gas pipe lines for its transportation and distribution to distant com-

7 munities, would produce a large profit to the owners. Complainant was organized primarily for the purpose of acquiring said rights and engaging in the natural gas business;

but, before entering upon financial arrangements to construct a pipe line for the delivery of the gas to Arkansas communities, it caused an exhaustive investigation as to the possibilities of said field to be made by men who had had many years' experience in the natural gas business. The investigators reported to complainant that the gas field gave evidence of being the best that had been developed in the United States, and of having practically an inexhaustible supply, and would justify the large expenditure necessary for the distribution of the gas produced in said field at points in Arkansas as far north as Little Rock, Hot Springs and Pine Bluff.

III.

Upon receiving this report, complainant took the necessary steps to raise the money to construct an adequate pipe line system for the sale of gas produced in said field to Arkansas communities, including the City of Little Rock, and began the negotiation of contracts for the sale of gas to be distributed in the cities of Little Rock and Hot Springs.

There were artificial gas plants in the cities of Little Rock, Hot Springs and Pine Bluff. Complainant purchased the artificial plant at the City of Pine Bluff and converted it into a natural gas plant. In the City of Little Rock it contracted with the Pulaski Gas Light Company, the predecessor in interest of the defendant, Little Rock Gas & Fuel Co., for the sale of gas to it to be distributed by the said Pulaski Gas Light Company to the users in the City of Little Rock, and, likewise, contracted with the Hot Springs Gas Company of the City of Hot Springs, the predecessor in interest of the defendant, Consumers' Gas Company, for the sale of gas to it to be distributed to the users in said city. Each of said contracts required the local gas company to convert its plant into a natural gas plant and to make such changes as were necessary and requisite for the proper conduct, through the artificial plant, of a natural gas business.

The pipe line system was built principally to reach the City of Little Rock, which city, together with Argenta, in 1910, contained a population of approximately fifty-five thousand people, it being estimated by complainant at said time that approximately fifty per cent of its domestic and industrial business would come from said cities and their environs; and, before beginning construction of its pipe line system it entered into said contract with the Pulaski Gas

Light Company under date of February 16, 1910, wherein
9 the Pulaski Company agreed to take and pay for, on the terms set out in said contract, all the natural gas which it might need for the supply of the cities of Little Rock and Argenta, and of its patrons and consumers within the limits of said cities of Little Rock and Argenta and their environs; and complainant agreed to sell and furnish to the Pulaski Company, from the lands then held by it, or such other lands as it might acquire that would be tributary to the system and pipe lines contemplated by the contract, all the natural gas the said Pulaski Company might need for furnish-

ing its patrons in said communities. Complainant, on its part, agreed to construct, complete, maintain and operate a pipe line of sufficient capacity to transport and deliver twenty-five million cubic feet of natural gas each day of twenty-four hours at a pressure of not less than twenty pounds at its point of delivery at Little Rock, with adequate, necessary and proper compressing stations, from its lands in the Parish of Caddo in the State of Louisiana, having a terminus at or near the city limits of the said city of Little Rock, at a point to be selected and agreed upon by and between the said Pulaski Company and complainant. Complainant also undertook that it would without discrimination, furnish to the Pulaski Company all the gas required by it, and to that end, but subject 10 to the duty it might owe in other areas of consumption, it would drill and develop wells in its said gas territory recited in said contract as being located in the Parish of Caddo; a copy of said contract is herewith filed, marked "Exhibit B," and asked to be taken as a part of this complaint.

Prior to entering into the aforesaid contract a memorandum of agreement, under date of December 8th, 1909, was entered into by and between complainant and the said Pulaski Company, whereby it was agreed that complainant would cooperate with the Pulaski Company in procuring a franchise for the distribution of natural gas in the cities of Little Rock and Argenta, such franchise to be taken either in the name of the Pulaski Gas Light Company, or, at the execution of the contract provided by said memorandum, be assigned to said Pulaski Company. The said memorandum provided for a written contract to be entered into within ninety days after said franchise had been procured, whereby the complainant would covenant on its part to construct a pipe line from its gas fields to a point of connection with the distributing mains of the Pulaski Company, at or near the city limits of the city of Little Rock, with a delivery capacity of twenty-five million cubic feet per day of twenty-four hours, with a provision that said gas shall be 11 exclusively distributed by the Pulaski Company to the inhabitants of the cities of Little Rock and Argenta and their environs for domestic and other uses; that as compensation for distributing the same the Pulaski Company should retain as its own property the percentages set out in said memorandum of the gross sums actually collected by it for the gas so distributed by it; a copy of said contract is herewith filed, marked "Exhibit C" and asked to be made a part of this complaint.

Based on said memorandum agreement, the Pulaski Company applied to the City Council of the City of Little Rock for an amendment and extension of its franchise whereby it would be permitted to distribute natural gas through its mains and pipe lines at the price fixed in said ordinance. Section Three of said ordinance required the Pulaski Company, when natural gas is once furnished to the City of Little Rock, to suspend the supplying of artificial gas and to furnish natural gas as long as it could procure an adequate supply of same from the Caddo fields. Said ordinance also provided

that "it is understood that in bringing natural gas to the City of Little Rock from the 'Caddo gas fields' the Pulaski Gas Light Company, its successors or assigns, may extend its line to other cities, and it is agreed that the rate fixed for natural gas in the City of Little Rock shall be as low as the lowest rate given to any city being supplied from said gas line, located more than one hundred and fifty miles from the Caddo gas fields;" a copy of said ordinance is herewith filed, marked "Exhibit D" and asked to be made a part of this complaint.

On January 15th, 1910, subsequent to the memorandum agreement between complainant and the Pulaski Company, of December 8th, 1909, and prior to the formal contract entered into on February 16th, 1910, as well as prior to the passage of the ordinance by the City of Little Rock authorizing the Pulaski Company to distribute natural gas through its mains, the Pulaski Company entered into a contract with a commercial body of the City of Little Rock known as the "Business Men's League," wherein it was recited that "the Business Men's League has been and is working for the upbuilding of the City of Little Rock and the reduction in cost of fuel, in order that the city may properly be developed, and in order to accomplish this result has been endeavoring to get a supply of natural gas from points known as the 'Caddo fields' in the State of Louisiana, and for this purpose has been negotiating with the Pulaski Gas Light Company, now supplying artificial gas to the City of Little Rock, to bring or cause to be brought natural gas to be supplied through its lines to the people of the City of Little Rock." In consideration of the Business Men's League exerting its efforts to procure a right-of-way for a line to be constructed in Pulaski County, at a reasonable cost; and in consideration of the efforts of the Business Men's League to procure for the Pulaski Company a satisfactory amendment to its franchise, and other good and valuable considerations, the Pulaski Company agreed that it would, for a period of five years after natural gas is brought to the City of Little Rock, furnish the same to consumers within the then existing or future corporate boundaries of the City of Little Rock at a schedule of rates set forth in said contract. Said contract also provided that rates for manufacturing purposes shall be extended to manufacturing plants outside the corporate limits of the City of Little Rock and within five miles of such corporate limits, provided such manufacturing plants shall pay the expense of laying the pipe line from the said city limits to such manufacturing plant; a copy of said contract is herewith filed, marked "Exhibit E," and asked to be taken as a part of this complaint.

On the 15th of April, 1910, Complainant and Pulaski Gas Light Company entered into a contract supplemental to and amendatory of that certain contract made and entered into between said companies dated February 16th, 1910. In said contract it was agreed that the Pulaski Company should supply gas to the City of Little Rock and its inhabitants at the price and upon the terms and conditions set forth in the aforesaid agreement between

the Business Men's League and the Pulaski Company; and it was stipulated in said contract that both complainant and the Pulaski Company would endeavor to procure a modification of the said contract with the Business Men's League so as to fix the maximum rate to consumers of one million cubic feet of gas, or more, per month, at twelve and one-half cents per thousand cubic feet, and that the furnishing of gas at such price is hereby assented to by both parties to the agreement.

Complainant says that by the terms of said contract it ratified, approved and adopted as its own the contract entered into between the Pulaski Company and the Business Men's League, with a reservation only as above set forth that both parties would endeavor to procure a change in the rate for gas sold in quantities in excess of one million cubic feet. Complainant says that the Business Men's

League assented to said change and the said contract was
15 modified so as to authorize a rate of twelve and a half cents per thousand cubic feet net for consumers of one million cubic feet of gas, or more, per month; a copy of said supplemental and amendatory contract entered into as of date April 15th, 1910, is herewith filed, marked "Exhibit F," and asked to be taken as part of this complaint.

Complainant adopted and ratified said contract with the Business Men's League because of the representation to it and the expectation on its part that cheap industrial gas would bring about a large factory and industrial development in Little Rock that would give it a large outlet for its surplus gas. Complainant says that contrary to said representations and its expectations, there did not, and there has not to this day, occurred a large factory and industrial development at Little Rock.

Complainant says that the said several contracts above set forth were entered into by it, and the terms of the Business Men's League contract were accepted by it, for the production and sale of natural gas to the Pulaski Company for distribution in the cities of Little Rock and Argenta, and their environs, from the gas fields in the

Caddo Parish, and from such other lands as complainant
16 might acquire, that should be tributary to the system of pipe line provided for in said contracts; and that the Pulaski Company, on its part, contracted for a supply of gas from the then known and developed field designated as the "Caddo gas field," or from other fields that might be developed on lands or gas rights acquired by complainant adjacent to the pipe line system it undertook in said contracts to construct from the Caddo field to the City of Little Rock. Complainant says that it has been unable by drilling and development operations, to acquire any gas tributary to said line, and that the gas supply in said Caddo field has failed.

IV.

Complainant, during the time it was negotiating with the Pulaski Company for the distribution by said company of gas to the inhabitants of the cities of Little Rock and Argenta, was also negoti-

ating for and obtaining franchises in said cities and towns for the sale and distribution of gas in the several towns and cities between the city of Little Rock and the Arkansas-Louisiana State Line. At the same time, complainant took up negotiations with the Hot Springs Gas Company for the distribution of gas by said company

17 in Hot Springs and its environs, but the same were not concluded and a contract consummated until some months later; but, complainant having made arrangements for the sale of gas to the Pulaski Gas Light Company for the cities of Little Rock and Argenta, and, having obtained franchises for the sale and distribution of gas to towns and cities in Arkansas, along the projected pipe line between Little Rock and the Arkansas-Louisiana line, began the construction of its pipe line system, the southern terminus being at Lewis, Louisiana, where it located its compressing station, known as the Rogers Station.

V.

On January 30, 1911, before complainant had completed the construction of its pipe line system, it entered into a contract with the Hot Springs Gas Company, as a distributing company for the sale and distribution of gas in Hot Springs and its environs, which was to be supplied to the said Hot Springs Company, through the pipe line then in course of construction, from the developed gas territory owned by complainant in the Caddo Parish, Louisiana. Under said contract complainant agreed to use its best endeavors to provide an adequate supply of natural gas for the Hot Springs Company, in sufficient volume to meet the requirements of its consumers, and,

18 to that end, to drill and develop its "present gas territory," the Caddo gas fields, and to acquire and drill and develop additional territory reasonably tributary to the pipe line system to be built from the Caddo field to the city of Hot Springs. Complainant assumed the obligation to drill and develop said gas territory and drill and develop additional territory tributary to the said pipe line system extending between the Caddo gas fields and the city of Hot Springs only so long as it might be reasonably profitable to do so. Complainant says that it contracted with the Hot Springs Gas Company for a supply of gas from the Caddo fields. A copy of said contract is herewith filed marked "Exhibit G" and asked to be made a part hereof.

Complainant, in its original purchase of gas leases and gas rights, acquired certain gas rights and leases in the State of Texas, adjacent to the Caddo Parish, thought at that time to be an extension of the Caddo gas field; and, thereafter and prior to entering into the contract with the Hot Springs Company, complainant had acquired considerable gas leases in Arkansas, in counties through which its pipe line system was projected, and counties adjacent thereto, in the hope that it would be able to develop a gas supply tributary

19 to its projected line in the State of Arkansas. The Hot Springs Company, at the time it entered into said contract,

was fully advised of the gas developments in northwest Louisiana, and of the holdings of gas leases and gas rights by complainant, and entered into said contract with reference to obtaining a supply for distribution to its consumers from the then developed field in the Caddo Parish and such other gas territory as might be discovered and brought in tributary to complainant's pipe line system extending from Lewis in the Vivian District of the Caddo Field to Hot Springs. Complainant says that it did acquire, drill and endeavor to develop such territory tributary to its pipe line system, as trained geologists reported gas could possibly be found in, and that it was and has been unable to develop any gas territory tributary to its pipe line system extending from Lewis to Hot Springs; that the Caddo Parish area and the East Texas acreage were thoroughly drilled by it and other operators, and in 1915 it ceased acquiring acreage therein, drilling same or endeavoring to develop it, because it was no longer profitable to do so.

VI.

The main line of complainant's pipe line system was connected up to the city of Little Rock in the early part of July, 1911,
20 and the branch lines to Hot Springs and Pine Bluff were connected up shortly thereafter, and complainant began to make deliveries of gas to said towns during said month. The construction of distributing plants in various towns and cities from which complainant had obtained franchises continued throughout the remainder of the year 1911 and through the year 1912, and construction was not fully completed until the latter part of the year 1912. The cost of the construction of the entire system, including the gathering lines in the field, the compressing station at Lewis and the transportation and distribution lines was \$6,155,-070.16. Between December 31, 1912, when the original construction of the plant was completed, and December 31, 1921, a period of nine years, there was added to plant investment account, by way of improvements and additions, the sum of \$971,544.06; so that the total investment in said plant on December 31, 1921, was \$7,126,614.22, exclusive of the five million five hundred thousand dollars paid in the common capital stock of the company for the original gas wells in the Caddo Parish, and for the gas leases and gas rights in said Parish and in the territory immediately adjacent thereto on the east boundary of the State of Texas.

Complainant, for the purpose of carrying on its business
21 in Arkansas, owns and uses property in Louisiana and Arkansas consisting of gas leases and gas wells, gas gathering lines, transmission lines and systems, compressing stations, regulator stations, rights-of-way, distributing lines and systems, and many other items of property both real and personal; that the present fair value of complainant's property used and useful in rendering its said public service is not less than the sum of \$8,000,000.00.

Complainant says that the gas wells, gas acreage and gas leases

acquired by it in October, 1909, were, under the then known conditions, well worth five million five hundred thousand dollars in money, and it was the expectation and belief of complainant that a sufficient return would be received from the sale of gas taken from said field, to the communities along the projected line in Arkansas, to amortize the plant within a reasonable period, pay interest on the entire investment in plant, wells and acreage, valuing the stock issued for wells and acreage at the par value of five million five hundred thousand dollars, and to give the investors a reasonable profit for the hazard of the undertaking. This expectation was based upon the most thorough investigation of conditions and the comparison of the open-flow and rock pressure of the producing wells in the said Caddo field with the gas fields in the Appalachian Uplift in the States of Pennsylvania, Ohio and West Virginia.

All of the contracts made by complainant, including the contracts for the purchase of the gas wells, gas rights and gas leases, as well as the contracts with the distributing companies at Little Rock and Hot Springs, and the obligations assumed by complainant to supply gas to towns and cities between Little Rock and the Arkansas-Louisiana State line, were made and entered into in the belief that the supply of gas in the Caddo field would be ample and sufficient to supply the demands of said cities for many years to come, and that such attractive prices could be charged for the gas for industrial use as would result in building up large industries in said communities along the line of complainant's pipe line system and afford complainant a large income from the sale of its surplus gas, which together with the income from domestic sales, would be amply sufficient to amortize the plant, pay depreciation charges, interest on the investment and return a fair profit to complainant's stockholders as heretofore alleged.

VII.

Complainant believed that the gas could be supplied for an indefinite time to users in Arkansas by the natural pressure of the wells, and that it would not be necessary, except on occasions of extreme peak demands, to increase the pressure by passing the gas through a compressing plant; and so, in constructing the compressing plant at Lewis, known as the "Rogers Compressing Plant," complainant installed originally only one compressing unit of thirteen hundred fifty horsepower. When it began to supply gas in the summer of 1911 the compressing plant was not used, the gas being turned directly from the wells into the line; at that time, only a part of the potential capacity of one well was used, but in the latter part of the year 1911 and during the year 1912 large oil developments occurred in the Caddo area resulting in the opening up of considerable of the gas sand from which complainant's gas supply was obtained. This resulted in a decline in pressure, which, by the summer of 1912, became very serious. Complainant could no longer supply gas by the natural pressure of the wells and was

forced to increase the compressing units of its compressing plant so that by the end of the year 1912 it had increased the horsepower of the Rogers Compressing Plant from 1,350 to 4,150 horsepower.

24 The gas pressure had declined to such an extent by the latter part of 1913 that it became necessary for the complainant to install a compressing station to gather in the gas from the wells by suction process and give it sufficient pressure to deliver it into the compressing station at Lewis for compressing and delivery into the lines for use in Arkansas. This greatly increased operating costs. The complainant at that time was unable to obtain sufficient gas to take care of the markets it had developed and they were not even then fully supplied; that is, the complainant had not taken on all of the business that it could have obtained in the different communities supplied by it, because of its inability to furnish said communities with an ample supply of gas.

Complainant found itself in a very desperate situation. Its business had not been developed to the extent that it could earn from operations more than the necessary operating expenses and the amount required to pay interest on its bond obligations. It was without funds for constructing an additional compressing plant and making other necessary additions to the system, but construction of an additional compressing plant to gather in the gas from the depleted gas wells was necessary if the company was to continue for

any appreciable time the supply of gas to its customers in
25 Arkansas. In this situation it appealed to its principal stock-

holders to advance the necessary amount to erect the second compressing plant to be located near Oil City and to be known as the "De Soto Compressing Station." Complainant's principal stockholders advanced approximately the sum of one hundred and sixty thousand dollars for the construction of said station, which complainant erected during the latter part of the year 1913, under an agreement that it would repay the amount advanced by said stockholders in monthly installments of five thousand dollars. Notwithstanding the installation of said additional compressing station, which was used primarily to pull into the lines low pressure gas, the situation was not materially relieved for more than four or five months, by reason of the constantly diminishing supply.

VIII.

In the early part of the year 1914 there had been some large gas wells developed in De Soto Parish fifty-four miles in a southeasterly direction from the southern terminus of complainant's pipeline system. These wells in the De Soto Parish were brought in by the Texas Company in its drilling operations for oil. The Texas Company owned large acreage in that field and its gas requirements were small. As soon as the wells were brought in A. B. Dally,
26 Jr., complainant's general manager, investigated the prospects of the field and took up with the Texas Company and the Southwestern Gas Company, which latter company supplied

Shreveport, La., and Texarkana, Ark., with gas from the Caddo field, the question of building a joint line from the Caddo field to the newly discovered De Soto field in De Soto Parish. Complainant, on its part, was unable, out of earnings, to contribute to the construction of such a line, and because of its poor showing its earnings could not obtain the money on its paper to make the extension.

Confronted with this condition, Mr. Dally appealed to some of the principal stockholders of the Arkansas Company to join with stockholders of the Texas and Southwestern Companies in organizing a company to construct a transporting line to be operated for the joint benefit of the three companies.

The negotiations resulted in the organization of the Reserve Natural Gas Company by the principal stockholders of each of the companies and the entering into a joint contract by the three companies with the Reserve Company. Said contract defined the duties and obligations of each company in respect to the delivery

of gas from wells owned or controlled by each into the Reserve Company's lines for distribution in the proportions fixed by the contract to each of the three companies. This contract was entered into on the 12th day of September, 1914, and by its terms complainant was obligated to deliver into the Reserve Company's lines twenty-six and two thirds per centum of the total quantity of gas delivered daily into said line by the three companies, and was permitted to take from the lines for distribution to its consumers sixty-one per centum of the total daily quantities taken from the line. The Texas Company which, as before stated, had small requirements for gas consumption, was obligated to put into the lines sixty per centum of the total quantity of gas delivered daily by the three companies to the said Reserve Company, and was permitted to take from the lines for its use only eleven per centum; the Southwestern Company was obligated to put 13½ per centum of the total deliveries into the line and was permitted to take therefrom 28 per centum. By the terms of said contract the Reserve Company was to pay for the gas delivered monthly by each of the companies to it the sum of 2 cents per thousand cubic feet, and each of the companies agreed to pay the Reserve Company for the gas received by them from it during the preceding month 4½ cents for each

28 and every thousand cubic feet, the difference of 2½ cents being estimated as the amount necessary to pay operating and maintenance charges, interest and a fair return on the investment in the Reserve Company. The operating costs of the Reserve Company were comparatively small as the gas was at that time transported and delivered by the Reserve Company to each of the three Companies on the natural pressure of the wells. By the terms of the contract the Reserve Company was also authorized to purchase gas from other parties and, in the event of the purchase of same, each of the three companies would be entitled to receive its pro rata part of the gas. A copy of said contract is herewith filed, marked "Exhibit H" and asked to be taken as a part of this complaint.

The Reserve line was completed in December, 1914, and on its completion the acute situation that had confronted the Arkansas company for a period of two years was relieved and it was for some time thereafter able to obtain, through its contractual relations with the Reserve Company, sufficient gas to meet the demands of the consumers in Arkansas.

The Reserve Company, in constructing its line to the gas field in the De Soto Parish, passed through a shallow gas pool lying partly within the corporate limits of the City of Shreveport and immediately west thereof, known as the "Cross Lake Field," in which territory gas had about that time been discovered, and a limited quantity of gas was obtained for a short period by the Arkansas Company from said field, which was delivered by it into the lines of the Reserve Company as part of its contribution to the total gas delivered daily to the Reserve Company. This gas supply, however, was of short duration. No considerable quantity of gas, however, was at any time obtained from the wells and the amount obtained was wholly inadequate and insufficient to enable complainant to supply its consumers in Arkansas.

In 1916 a small gas field was developed south of Shreveport, in what was known as the "Cedar Grove Field." The Reserve Company built a branch line into said field and for a short period of time gas was obtained therefrom by each of the three companies, that is, Complainant, the Southwestern and The Texas Companies, and delivered into the lines of the Reserve Company, but gas in commercial quantities was recovered from that field for only a short time. By the end of the year 1917 complainant was unable to secure from the Reserve Company sufficient gas to meet the requirements of its consumers in Arkansas. The rock pressure had declined very rapidly in the De Soto field, and the small supply of gas obtained from the Cross Lake and Cedar Grove fields did not sufficiently augment the diminishing supply obtained from the De Soto field to meet complainant's requirements. Likewise, the other companies depending upon the Reserve Company were unable to rely for any considerable period in the future on the supply from the De Soto field. In the meantime, prospecting had been going on east of Red River in Bossier Parish, in what is known as the "Elm Grove District," and some good producing gas wells had been brought in, and complainant had acquired leases and gas rights in said territory. The decline in the De Soto field and the inability to get gas in any considerable quantity out of the Caddo, Cross Lake or Cedar Grove fields, by the latter part of the year 1917 made it necessary to obtain another source of supply. The only known and developed source of supply at that time was the said Bossier field. The Reserve Company began the construction of a sixteen inch line from a connection with its main line to the Bossier field, which line was completed in the early part of the year 1918. The construction of said line was expensive, particularly so by reason of the crossings of Red River.

In consideration of the Reserve Company undertaking the construction of said line, the complainant, the Southwestern

and the Texas Companies agreed to a modification of their contract with the Reserve Company whereby the difference in the price paid by the Reserve Company for the gas delivered by each of the companies to it and the price at which it sold it back to the companies was to be $3\frac{1}{2}$ cents instead of $2\frac{1}{2}$ cents under the old contract, the additional one cent being estimated as necessary to meet the increased operating cost and interest on the additional capital investment. This agreement was entered into under date of June 1st, 1918, and provided that the price that the Reserve Natural Gas Company should pay for gas received by it should be the sum of three cents per thousand cubic feet and the price which it was to receive for gas delivered by it to each of the companies should be six and one-half cents per thousand cubic feet. A copy of said contract is herewith filed, marked "Exhibit I" and asked to be made a part of this complaint.

The Bossier field has been the chief source of supply of gas for complainant since the spring of 1918. The quantity it has been able to obtain from the Caddo field has not been sufficient for the

32 past several years to supply the company's requirements further north than the town of Hope in the State of Arkansas;

and it is now, and has been since said time, dependent upon the said Bossier field for its supply. The rock pressure has been gradually declining in said field, and unless some other source of supply is obtained or the low-pressure gas is obtained by the installation of additional compressing plants to draw out the residue gas in the sands in the several fields where the gas pressure has become low, the complainant will in a few years be unable to obtain further gas from the northwest Louisiana territory, and cannot function as a public utility unless it is able to acquire from some other territory, by purchase or otherwise, a sufficient supply of gas to meet its requirements. It cannot go into other territories unless it is afforded a return that will enable it to set aside out of its earnings annually a fund for that purpose, as it cannot, in view of the history of its operations in the past, raise the money on its securities. Complainant says that said gas fields known as the Cross Lake, Cedar Grove, De Soto and Bossier fields were not tributary to complainant's pipeline system; that complainant was unable to reach either of said fields by branch or gathering line extensions in order to procure for

33 use in Arkansas the gas supply in said distant fields, and was financially unable to construct an extension of its main line system to the De Soto field and subsequently a lateral line to the Bossier field, which would have cost it approximately \$1,000,000.00.

Complainant files herewith, as "Exhibit J," a map showing the several gas pools in the northwest Louisiana area above referred to. The yellow pools represent the original Caddo Parish development, the upper yellow pool being known as the "Vivian District" and the lower as the "Oil City District." The pools shaded red represent the De Soto field and the Cross Lake field; the pools shaded green represent the Cedar Grove field and the Bossier field. The most southerly point of complainant's line is shown in the lower yellow

pool of the Caddo field, marked "De Soto Compressing Station." The Reserve Natural Gas Company's line connects with complainant's line at this station and extends from the station in a south-easterly direction to the De Soto field, 54 miles distant. The broken red line forming a part of the Reserve Natural Gas Company's line represents that part of the main line of the Reserve Natural Gas Company which was removed the latter part of the year 1917 and used in constructing the new line to the Bossier field.

34

IX.

Complainant, to raise the necessary money to construct its pipe line system, issued five million dollars of first mortgage bonds, of which it sold four million at a discount of five per cent; one million dollars additional required in the construction of the plant was raised on the company's notes endorsed by its principal stockholders, secured by the remaining one million dollars of bonds, being the balance unsold of the five million dollar issue; in addition, other money was raised on the company's notes endorsed by its principal stockholders. So that by December 31st, 1912, there had been put into the property in money derived from the sale of bonds and from loans obtained by the company as aforesaid, the sum of \$5,155,070.16. The additional \$1,000,000 which the plant cost to construct was represented by \$1,000,000 of complainant's common capital stock paid to the contractor as his profit in executing the contract. Interest on the first mortgage bonds was payable at the rate of six per cent per annum semi-annually, as evidence by coupon notes attached to said bonds, and by the terms of the bonds, and of the first mortgage or deed of trust securing the same, complainant was obligated to retire said bonds in equal annual installments over a period of ten years beginning May 1st, 1913. The terms of the
35 mortgage loan were the ruling terms obtaining in the bond market for financing natural gas properties.

X.

Natural gas had not been used as a fuel in the territory supplied by complainant and, in order to introduce it as a fuel for cooking and heating purposes in the homes, and for use under boilers and in manufacturing establishments, it was necessary for complainant to make such prices as would develop a volume of business adequate to earn the necessary returns to pay interest and a profit on the investment, depreciation on the plant and retire the investment over the period of years required under its first mortgage. Complainant could not have fixed higher rates than were fixed during the early years of the development of its business and have built up the business; but, even at the prices fixed, which were deemed ample to give complainant the returns required as aforesaid, and also deemed low enough to build up a natural gas business, complainant was compelled to cease its efforts to add largely to its volume of gas sales because of the rapid depletion of its source of supply in the Caddo

36 field, and the uncertainty of obtaining an additional supply of gas from other sources to enable it to fully serve the customers already obtained. The maximum price fixed in the several franchises and the prices fixed in the several contracts, including the contract with the Business Men's League, were based upon the assumption that complainant's operating costs, both in the drilling of additional wells and in the compressing and transporting of gas, would be small, as the rock pressure of the wells at that time was ample, except in extreme peak demands, to convey the gas without the use of a compressor to the points of consumption, and it was believed that the original ten wells would furnish an adequate supply for a number of years, with a very small annual decline in pressure.

Early after complainant began operations in the summer of 1911, as hereinbefore alleged, the rock pressure declined and complainant was compelled to add to its compressing units, and to drill and bring in additional wells at large expense, and finally, in an effort to get sufficient gas in the Caddo field to meet the demands of the consumers attached to its lines, to build the De Soto Compressing Station for the purpose of gathering in the gas from the low pressure wells. This change in conditions which occurred almost im-

37 mediately after complainant began operations added very largely to the expense of operation and reduced the net income; so, complainant, during the years 1911, 1912 and 1913, earned but little more than the amount necessary to pay interest on its bonded and floating debt. As a result, complainant, on May 1st, 1913, was without funds with which to retire the first installment of bonds then matured, or the necessary funds to make extensions and additions to the plant. Complainant, being unable to retire the first installment of bonds then matured, applied to its bondholders for an extension of time, and the time for retirement of the bond issue was extended for a period of three years to May 1st, 1916.

On May 1st, 1916, complainant's financial condition had not improved. It had been compelled to expend large sums of money on production of gas to keep up the supply to its consumers at an increase in cost incident to the changing conditions in the field, and was at that time confronted with another shortage of gas. Since no gas was being obtained from the Cross Lake field, but little from the Cedar Grove field, and the supply in the De Soto field was being rapidly exhausted, and it was necessary for complainant to seek gas in other areas, which would require large additional annual ex-

38 penditures, complainant was confronted with a situation of having its property placed in the hands of a receiver by the bondholders, or of obtaining concessions from its bondholders that would permit it to use a part of the interest annually accruing on its bonds as a development fund. It began early in the year 1916 negotiations to refund the mortgage indebtedness and secure an agreement whereby the bondholders would surrender one-half of their bonds and take in lieu thereof seven per cent cumulative preferred stock of equal par value, with the understanding that the company would defer payment of dividends on the preferred stock

until its financial condition improved, and would use the money thus saved in developing an additional supply of gas and making much needed additions to the plant. As hereinbefore alleged, the company had borrowed one million dollars on its note endorsed by its principal stockholders, with one million dollars of its bonds pledged as collateral. The arrangement provided for the payment of this loan by its principal stockholders and the delivery to them of the million dollars of bonds which had been held as collateral to the loan, so as to include in the refinancing arrangement the sur-
rendering by said parties of one-half of the said million dol-
39 lars of bonds and the taking in lieu thereof of \$500,000 of
the seven per cent, cumulative preferred stock. The new
arrangement also provided for a small sinking fund to be created out
of the gross sales of gas, to be used to retire the bonds. When this
arrangement was completed the company still owed a floating in-
debtiness of approximately \$400,000, but, by deferring the divi-
dends on the preferred stock it saved annually in interest between
one hundred and fifty and one hundred and seventy-five thousand
dollars which amount was required in order to continue its drilling
operations and prospecting. In 1917 complainant expended in well
drilling, largely in the Bossier Parish, which promised to develop
into a very good gas field, \$116,315.00, which it would not have been
able to expend but for the re-financing arrangement made with its
bondholders. Out of the sinking fund created under the agreement
made with the bondholders in 1916 there was retired, during the
years 1917, '18, '19 and '20, \$395,000 of the bonds.

Complainant was unable, out of its earnings, to pay any dividends
on its preferred stock during the years 1916 to 1920, inclusive. If
it had paid same it could not have continued its prospecting for and
development of gas supplies.

40 In 1919 the company issued and sold a million dollars of
its common stock, the proceeds whereof were used in oil pros-
pecting and development, and during said year the company brought
in an oil field at Homer, Louisiana. The oil revenues created a
demand for the common stock, and in 1920 the company sold at par
an additional five million dollars of its common stock, which was
used to retire bonds and preferred stock; so, at the end of the year
1920, the company had paid off its bonded indebtiness, but with the
exception of \$395,000.00, the entire bonded indebtiness, includ-
ing the preferred stock which had been issued in lieu of bonds, had
been retired out of the sale of stock for which there was no market
until complainant had in its oil operations developed a paying oil
business.

XI.

Complainant's net operating revenue for the ten year period from
1911 to 1920, inclusive, amounted to only \$4,331,863.42. Com-
plainant says that the average value of its property used and useful
in the public service of supplying gas during said period was at least
\$7,500,000, and that six per cent. interest on said valuation would

amount, over said ten year period, to \$4,500,000, or \$168,136.58 in excess of the net operating revenue.

41 The undepreciated reproduction value of Complainant's production, transmission and distribution property used and useful in the natural gas business for supplying its customers in Arkansas, as of January 1st, 1922, exclusive of going concern value and working capital, was \$8,970,559.00. And the then net value of said plant, after making liberal deductions for physical depreciation, exclusive of the value as a going concern and of the working capital required to conduct the business, was \$7,058,219.00. Complainant says that at said date the fair value of Complainant's production, transmission and distribution property, reckoned on the basis of what it would cost to reproduce the same, considering it in its then condition and including going concern value and working capital, was and is in excess of \$8,000,000.00. The capital cost of Complainant's said plant, including additions made up to January 1st, 1922, and allowing fifty per cent of the par value as the then present fair value of the common capital stock issued in payment of the original ten wells and the gas acreage and gas leases, which formed the heart of the enterprise, and but for the ownership of which the lines in

Arkansas would not have been built, is \$9,876,614.22.

42 The going concern value of Complainant's said property, that is to say, the excess of the value of said property as a going concern, with its various units comprising the same installed, assembled, co-ordinated and in working order, and with an established business, over the aggregate value of all the installed units considered separately, was and is fifteen per centum of its original cost; and to properly conduct the business there is required as working capital not less than the sum of \$250,000.00.

XII.

The maximum rate authorized under the franchises obtained in the several communities served by complainant was fifty cents per thousand cubic feet. Complainant, at the time it began its operations in 1911, established a rate for domestic gas of forty cents net for the first five thousand cubic feet, thirty cents net for the next ninety-five thousand cubic feet, twenty-five cents net for the next four hundred thousand cubic feet and twenty cents net for the next five hundred thousand cubic feet; and for industrial gas a rate of twelve and one-half cents net per one thousand cubic feet. These domestic rates were as high as could be made and induce persons

who had never used natural gas to abandon other fuel and
43 install gas burning stoves and equipment for natural gas, and a higher rate for industrial gas could not have been made on account of the low range of coal prices. During 1912 complainant, in order to get industrial business and to meet the competitive price of coal, was compelled to reduce the price of industrial gas to ten cents net for all over one million cubic feet; up to one million cubic feet the price remained at twelve and one half cents net. To offset in particular the increased cost to complainant of

gas obtained from the Reserve Natural Gas Company, complainant, in January 1915, increased its rates for industrial gas by providing a schedule of rates as follows:

First 3,000,000 cubic feet at 15 cents per M cubic feet.

Next 3,000,000 cubic feet at 13 cents per M cubic feet.

All over 6,000,000 cubic feet at 12½ cents per M cubic feet, with a discount of two and one-half cents per thousand cubic feet upon payment of bills on or before the 15th of the month following date of bill.

Complainant, on July 1st, 1916, at the expiration of the contract with the Business Men's League of the City of Little Rock,
44 established a new scale of rates for domestic gas as follows:

First 10,000 cu. ft. at 43 cts. per M cu. ft.

Next 10,000 cu. ft. at 38 cts. per M cu. ft.

All over 20,000 cu. ft. at 33 cts. per M cu. ft. with a discount of three cents per thousand cubic feet for payment of bills on or before the 10th of the month following the date of bill. At the same time, complainant established a new scale of rates for industrial gas as follows:

First 10,000 cu. ft. at 42 cts. per M cu. ft.

Next 10,000 cu. ft. at 37 cts. per M cu. ft.

Next 80,000 cu. ft. at 32 cts. per M cu. ft.

Next 100,000 cu. ft. at 22 cts. per M cu. ft.

All over 200,000 cu. ft. at 15 cts. per M cu. ft. with a discount of two cents per thousand cubic feet for payment of bills on or before the 15th of the month following the date of bill.

On January 1st, 1918, complainant again increased its price for industrial gas as follows:

First 10,000 cu. ft. at 42 cts. per M cu. ft.

Next 10,000 cu. ft. at 37 cts. per M cu. ft.

45 Next 130,000 cu. ft. at 32 cts. per M cu. ft.

Next 50,000 cu. ft. at 27 cts. per M cu. ft.

All over 200,000 cu. ft. at 22 cts. per M cu. ft. with a discount of two cents per thousand cubic feet upon payment of bills on or before the 15th of the month following the date of bill.

On July 1st, 1918, complainant changed its rates so as to provide as follows:

Domestic Gas.

First 50,000 cu. ft. at 48 cts. per M cu. ft.

Next 50,000 cu. ft. at 43 cts. per M cu. ft.

All over 100,000 cu. ft. at 38 cts. per M cu. ft., with a discount of three cents per thousand cubic feet upon payment of bill on or before the 10th of the month following the date of bill.

Industrial Gas.

First 50,000 cu. ft. at 47 cts. per M cu. ft.

Next 50,000 cu. ft. at 42 cts. per M cu. ft.

Next 50,000 cu. ft. at 37 cts. per M cu. ft.

Next 50,000 cu. ft. at 32 cts. per M cu. ft.

46 All over 200,000 cu. ft. at 22 cts. per M cu. ft., with a discount of two cents per thousand cubic feet upon payment of bill on or before the 15th of the month following date of bill.

All of the above changes in rates were made prior to the establishment of the Arkansas Corporation Commission by Act 571 of the Legislature of 1919, approved April 1st, 1919. Complainant made such changes in the rates from the beginning of operations to the date of the creation of the Corporation Commission, as in the judgment of its officers it could make and build up the business of the company. It endeavored at different periods to increase its rates to offset the increasing cost of operations in the fields. After the Reserve Company had built its line to the Bossier field, lying east of Red River, complainant, to offset the increased cost of operations in said field, as well as the increased price to it for gas charged by the Reserve Company, undertook to revise its rates with the hope and expectation that the revised scale would result not only in offsetting said increased cost but would also produce a considerable increase in its net operating revenue. This scale of rates did increase the net operating revenue during the year 1918, but on account of the increased costs of operation, incident to the increased costs of labor and material, which reached its peak during the year

47 1919, and on account of the necessity of larger expenditures for leases and prospecting new areas for gas, the net operating revenue of the company actually decreased for the year 1919. For the year 1920 there was some increase in the net revenue incident to the very large volume of business done during said year, particularly the abnormally large volume of industrial gas which was sold during the first half of the year. Also the revenue was increased some by the raise in the price of industrial gas, by order of the Arkansas Corporation Commission, for all gas sold in excess of two hundred thousand cubic feet, from twenty cents per thousand cubic feet to twenty-five cents per thousand cubic feet.

Complainant, in the latter part of the year 1919, filed a tariff with the Corporation Commission providing for an increase of five cents per thousand cubic feet on all gas sold to industrial consumers each month in excess of two hundred thousand cubic feet. The Corporation Commission on September 1st, 1920, granted the increase. Complainant made the increased rate effective as to the towns and communities supplied by it as of date January 1st, 1920, by filing a bond with the Commission conditioned that it would refund

48 the difference between the said rate put into effect by complainant and such rate as the Commission might, upon final hearing, adjudge to be reasonable and just. The defendant, Little Rock Gas & Fuel Company, filed a tariff with the Corporation Commission at the same time complainant filed its new tariff, providing for a like increase in its rates for industrial gas, but declined to make the rate effective by the filing of a bond with said Commission, so that the increased rate of five cents did not become effective as to industrial users in Little Rock and its environs until September 1st, 1920. The defendant, Consumers' Gas Company of Hot Springs,

declined to make application to the Corporation Commission for an increase in industrial rates and no increased rate was put into effect as to the industrial consumers of Hot Springs and its environs.

Complainant says that notwithstanding the increased revenue derived from the increase in its said industrial rate, and notwithstanding the large increase in volume in the consumption of industrial gas during the first half of the year 1920, complainant's earnings for the year 1920 were wholly insufficient to give it a reasonable and fair return upon its property; that said earnings were not sufficient to pay interest on the fair value of complainant's property used and useful in the public service and to set aside a reasonable sum for amortization of the plant.

XIII.

Complainant says that during the year 1920 it was confronted with a situation, and is now confronted with said situation, wherein it was drawing large supplies of gas from a rapidly diminishing source of supply and selling it for industrial and domestic uses at prices that did not yield it a fair return on the value of its property used and useful in the public service, and did not yield it any sum for profit, amortization of its investment or for the extension of its lines and development of additional sources of supply so as to maintain the integrity of the plant and the continuity of its service; that it had operated its plant for a period of ten years at a loss, and unless it was afforded a revenue sufficient to enable it to continue development operations and make extensions, that it would, in a few years, apparently four or five years at the outside, be compelled to go out of business and lose its entire investment other than a small salvage value not exceeding five or six hundred thousand dollars.

Complainant was also confronted with a condition, and is now confronted with said condition, in the cities of Little Rock and Hot Springs which not only resulted in a very large loss of revenue to it, but also encouraged wasteful methods by the distributing companies in the conduct of their business. Under the aforesaid contracts between complainant and the defendant Little Rock Gas & Fuel Company and between complainant and the defendant Consumers' Gas Company, complainant's compensation for gas sold to said companies for distribution by them to their patrons and consumers was based on the percentages named in said contracts of the gross collections made by said distributing companies. These contracts had ceased to be binding obligations between complainant and the respective companies because the source of supply provided for in said contracts had become exhausted. Complainant on account of inability to establish city border rates continued to deliver gas to said companies and obtain its compensation therefor on the percentage basis. Complainant says that the unfairness of said percentage contracts does not rest only in the fact that the gas is sold by the local distributing companies on a mere percentage of the total receipts through the ultimate consumer's meter, but also on the fact that all unaccounted for gas, including gas lost through leakage in distributing lines, becomes the loss of

the producing company; that there is no incentive resting upon the distributing companies to keep their plants and systems in good condition of repair, since the loss by leakage is — no event their loss. Also, the distributing companies operating on a percentage basis are not as careful in handling collections or obtaining proper security for gas sold, or in carrying on their business efficiently, as when the entire responsibility for the loss from unpaid bills rests upon them. Complainant was therefore confronted and burdened with many wasteful and bad practices on the part of the said defendants in the conduct of their business which materially affected the revenues of complainant, and in addition the failure of said defendants to keep their plants in repair occasioned such heavy loss of gas by leakage as to threaten the continuity of service.

The unaccounted for gas in the Little Rock plant for the year 1920 amounted to 732,397,000 cubic feet, or an actual loss per mile of equivalent 3 inch main, of approximately 3,000,000 cubic feet, or 15 times good practice, which is not exceeding 200,000 cubic feet per mile of equivalent 3 inch main.

52 The unaccounted for gas in the Little Rock plant for the year 1921 amounted to 834,209,000 cubic feet, or an actual loss per mile of equivalent 3 inch main of 3,580,000 cubic feet, or 17 times good practice.

At Hot Springs the loss of unaccounted for gas for the year 1920 amounted to 114,646,000 cubic feet, and in 1921 to 158,816,000 cubic feet, or — times good practice.

With approximately seventy per cent of the supply of the Bossier field exhausted, with no other available supply developed other than a field about fifty miles distant from complainant's southern terminus, or twenty-five miles distant from the nearest point to the Reserve Company's line, known as the "Bethany field," located on the east border of the State of Texas, to reach which field would require a large capital investment on the part of complainant or, if gas were obtained therefrom through an extension of the Reserve Company, would mean a large increase in the price of gas to be paid said Reserve Company, complainant applied to the Corporation Commission on December 31st, 1920, for a revision of its rates, filing with it a schedule of rates and classifications of service to be effective

on the dates therein shown, wherein complainant increased 53 the rate for gas sold to domestic consumers to 65 cents flat per

M cubic feet, and provided for a city border rate to be paid by distributing companies obtaining gas from it at the city gates, under which the distributing companies would be required to pay at the prices fixed for all gas delivered to them by complainant and would thereby assume the burden of loss from leakage and all other losses in the operation of their plant.

The Arkansas Corporation Commission was vested with the authority in the making of rates to disregard contracts between the utility applying for the rates and any municipality or individual or other corporation, and in the exercise of the police power vested in it was authorized to make and put into effect rates that would give a fair and reasonable return, considering the hazards of the business,

upon the fair value of the property of the utility devoted to the public service. The Corporation Commission, shortly after the filing of the aforesaid schedule, by an order under the provisions of Section 7 of the Act creating said Commission, suspended the operation of said rates, and thereupon complainant tendered to the Corporation Commission a bond to supersede its said order of suspension and to

put said rates into effect, which the said Commission declined to receive and accept upon the alleged ground that it

was not authorized to receive such bond until thirty days after the filing with said Commission of said schedule of rates. Before the thirty days had expired, and before complainant could bring to trial a suit instituted by it to compel the Corporation Commission to accept said bond, the Legislature of Arkansas, which was then in session, passed a special Act repealing the provision of the Corporation Commission Act permitting the filing of such bond.

Complainant says that the provision of said Act No. 571 permitting the filing of a bond protected a utility against confiscation of its property during the rate-making process; that with the passage of an Act repealing said clause complainant was compelled to continue serving the public at the old and confiscatory rates during the period of hearing upon its complaint; that the final decision on its application for increase in rates was not made until the 3rd day of September, 1921, a period of more than eight months after complainant had filed its petition asking for an increase of its rates. Complainant says that during all said period of time it was rendering public service and selling its gas to the public and domestic and in-

55 industrial consumers at the old rates, which were unreasonably low and operated to confiscate parts of its property; that the

effect of the said Act of the Legislature, Act Number 10, approved January 26, 1921, was to take complainant's property, and parts of its property, for public use without due compensation, and to deprive it of the equal protection of the law, in violation of the Fourteenth Amendment to the Constitution of the United States.

XIV.

Complainant says that at the time said special Act was passed repealing the bond provision in the Corporation Commission Act an act was pending in the Legislature to abolish the Corporation Commission and establish in lieu thereof a Railroad Commission, and to transfer to the municipalities of the State jurisdiction in rate making for all public services rendered by utility companies within the limits of such municipalities, and conferring upon the Railroad Commission such jurisdiction over utilities in rate making matters as was not exclusively vested in the municipalities. Said Act, being known as "Act Number 124," was approved February 15th, 1921, and under it the defendant, Arkansas Railroad Commission, was created.

Section 22 of said Act provided, "that all investigations, proceedings or hearings that may be pending before the Arkansas 56 Corporation Commission at the time this Act becomes effective, and the hearings of which are embraced within the

powers herein conferred on the Arkansas Railroad Commission, shall be transferred to the Arkansas Railroad Commission for such adjudication as may be made by it under the terms of this Act." Under the terms of said Act numbered 124, the Corporation Commission was given jurisdiction in the matter of making rates for utilities for service to its patrons and consumers outside of the limits of municipalities, and by the aforesaid provision of Section 22 complainant's application for an increase of rates, as to the unincorporated towns served by it, and for the establishment of city border rates for the cities of Little Rock and Hot Springs, together with all the evidence taken in said proceedings relating to the establishment of such rates, was automatically transferred to the Arkansas Railroad Commission, as the hearing of complainant's application for an increase of rates to be charged its consumers and patrons in unincorporated towns, and for the establishment of city border rates, was vested, under the terms of said Act 124, exclusively in the Railroad Commission. Said Act 124 did not prescribe any limitation upon the Railroad Commission, or upon the several municipalities of the State, in the exercise of the police power, in fixing rates that would provide a

57 fair and reasonable return upon the property of utilities devoted to the public use, and under the terms of said Act said Railroad Commission and said municipalities, in the exercise of the police power delegated to them by the Legislature, could alter, change, modify, abrogate or disregard contracts as fully and completely as could the Arkansas Corporation Commission under the powers delegated to it; that the restriction in Section 23 of said Act did not operate to limit the power of municipalities in that respect, since the provision was lacking in mutuality. But, if said section should be construed to preserve to the municipalities the benefits accruing to them under contracts and franchises with public utility companies, it would not restrict the power of the municipality in fixing rates for complainant in excess of rates specified in franchises granted to complainant by said municipalities, because complainant had, prior to the passage of said Act 124, under the terms of the then existing law, to-wit, Act 571 of the Acts of the Legislature of 1913, taken out an Indeterminate Permit as to each of the municipalities in which it operated; and by the terms of said Indeterminate Permit, and of the statute under which the same was granted, the franchises granted by and contracts with the municipalities authorizing com-

plainant to use the streets, alleys, avenues and public places 58 for the conduct of its business were terminated, and complainant, after the issuance of said Indeterminate Permit conducted its business in said municipalities under the authority and grant of the State, free from interference by the municipalities except in the matter of reasonable regulation pertaining to the performance of its public service.

XV.

Complainant says that while its application for an increase of rates was pending before the Arkansas Railroad Commission, and

before a hearing could be had thereon, the Legislature of Arkansas passed Act Numbered 443, approved March 25, 1921, entitled, "An Act to amend Act No. 124 of the General Assembly for the year 1921, approved February 15, 1921." That said Act amended Section 22 of Act 124 to read as follows:

Section 22. "All records, papers, furniture and stationery under the control of the Arkansas Corporation Commission at the time of the passage of the Act of which this is an amendment, shall be turned over to the Arkansas Railroad Commission and remain in its custody, and all investigations, proceedings and hearings that were pending before the Arkansas Corporation Commission at the time of the passage of the Act of which this is an amendment, and the hearings of which are embraced within the powers conferred on

the Arkansas Railroad Commission, shall be transferred to
59 the Arkansas Railroad Commission for such consideration,
orders and determination as may be made by it under the terms of the Act of which this is an amendment, and the petitions pending before the Arkansas Corporation Commission at the time of the passage of the Act of which this is an amendment, involving regulations of service and rates, for natural gas, and numbered 417, 418 and 423 on the records of said Arkansas Corporation Commission, are transferred to the Arkansas Railroad Commission for decision and the making of such orders and rates as may be appropriate, and the Arkansas Railroad Commission shall consider the testimony that has heretofore been taken in said cases and hear such further testimony as may be appropriate to fully present such cases, and such orders and rates as may be made by the Arkansas Railroad Commission in the said gas cases shall apply not only to the service outside of municipalities, but also to the service and rates for supplying natural gas within municipalities or to distributing companies operating within such municipalities, except that the Arkansas Railroad Commission shall have no jurisdiction or power to modify or impair any existing contracts for supplying gas to persons, firms, corporations, municipalities or distributing companies, and such contracts shall not be affected by this Act or the Act of which this is an amendment.

"From the decisions of the Arkansas Railroad Commission in such cases appeals may be prosecuted to the Circuit Court and Supreme Court, and such appeals shall be taken, proceeded in, heard and disposed of as provided in sections 20 and 21 of the Act of which this is an amendment; provided, however, that on the determination of such natural gas cases by the Arkansas Railroad Commission and the decision on any appeals therefrom and the making of orders by the Commission in pursuance to orders of the court

60 made on such appeals, the powers and jurisdiction of the Arkansas Railroad Commission to regulate these particular utilities and fix their rates shall be such only as is conferred by other sections of the Act of which this is an amendment. In all cases where the Arkansas Corporation Commission made a final decision or order before the Act of which this is an amendment be-

came effective and the time for an appeal has not elapsed, any party to said proceedings shall have the right to have the matter heard on appeal as is provided in sections 20 and 21 of the Act of which this is an amendment."

Complainant says that by the terms of said special Act, the case, to-wit, case number 423, pending before the Arkansas Corporation Commission, being complainant's application for an increase of rates, and cases numbers 417 and 418, being petitions of consumers of complainant for the establishment of regulations as to maintaining pressure and for cutting off of industrial services for the protection of domestic consumers in cases of extreme peak demands of domestic consumers for gas, were transferred to the Arkansas Railroad Commission for the making of such orders and rates as may be appropriate to apply within municipalities or to distributing companies operating within such municipalities, as well as to service outside of municipalities, but with a limitation that the said Railroad Commission shall have no jurisdiction or power to modify or impair any existing contracts for supplying gas to
61 persons, firms, corporations, municipalities or distributing companies, and that such contracts shall not be affected by said Act or the act of which it is an amendment. That said limitation to said Act does not apply to any other utility company in Arkansas engaged in the natural gas business, or to any other class of utility companies, and as to complainant is discriminatory and void and in violation of the rights guaranteed to complainant under the Fourteenth Amendment to the Constitution of the United States, in that it denies it the equal protection of the law and takes its property for public use without due compensation; that said limitation in said Act is separable from the other portions of said Act and may be eliminated from the said Act without destroying the authority vested in the Railroad Commission to make reasonable rates and regulations for complainant within the limits of municipalities, on its then pending application, as well as outside of the limits of municipalities.

That the Railroad Commission, on September 3rd, 1921, made and entered an order denying complainant's application or classification of service and increase of rates, and declined to enter an order establishing city border rates for the cities of Little Rock and Hot Springs upon the ground that it had no legislative power delegated to it to modify, change or impair existing contracts between
62 complainant and the defendants Little Rock Gas & Fuel Company and Consumers' Gas Company of Hot Springs. Complainant says that since the aforesaid provision imposing a limitation on the power and authority of the Arkansas Railroad Commission is void and of no effect, that it had full power and authority to establish city border rates.

XVI.

But, complainant says that if it should be held that said provision in said special Act Number 443 of the Legislature of Arkansas for

the year 1921 is not discriminatory and not in violation of the guarantees to complainant under the United States Constitution and, therefore, not void; nevertheless, the Railroad Commission had full power and authority to establish city border rates for complainant, because there was not at the time said special Act was passed any existing contracts between complainant and the defendants Little Rock Gas & Fuel Company and Consumers' Gas Company of Hot Springs, or either of them.

Complainant, for a number of years, had not been obligated to furnish gas under the terms of said contracts to either of said defendants, because it had been unable for a number of years
63 to obtain a supply of gas in the Caddo fields, or on lands and gas areas owned by it at the time said contracts were entered into, or that were tributary to the pipe line system constructed by it from Lewis to Hot Springs and Little Rock. Complainant, the latter part of the year 1920, served notice upon each of said defendants that said contracts had expired and were not considered by complainant as being in force or binding, by reason of the change in the source of supply, and complainant has not since said time in any way recognized said contracts as binding upon it.

That it has expressly stipulated in accepting payments for gas supplied said companies on the percentage division of existing rates that it did not recognize said contracts and was accepting said basis of settlement only because it had been unable to obtain and establish through the regulatory body having jurisdiction other and different rates. The defendant, Consumers' Gas Company, was further notified that complainant would not recognize the contract with it because of the changes in physical conditions as hereinbefore fully set forth, and because of the inability of complainant to develop territory, in addition to the territory from which the supply of
64 gas was obtained at the time the contract was entered into, reasonably tributary to its then plant, and because it was not longer reasonably profitable, by reason of said change in conditions, to acquire and develop additional territory for the production of a supply of gas to be delivered to said defendant.

XVII.

Complainant represents that said special Act Number 443 of the Legislature of Arkansas, approved March 25, 1921, authorized appeals from the decisions of the Arkansas Railroad Commission to the Circuit and Supreme Courts and provided that said appeals, "shall be taken, proceeded in, heard and disposed of as provided in Sections 20 and 21 of the Act of which this is an amendment"; that is, of Act 124 of the Legislature of Arkansas, approved February 15, 1921; that Section 20 of said Act 124 provides that upon an appeal being taken to the Circuit Court in the manner provided in said section the Circuit Court shall, "review said order upon the record presented as aforesaid in the case and enter its finding and order thereon, and cause to be certified forthwith to such Commission

the said order, therein directing that action be taken by said Commission in conformity therewith, unless an appeal from said order to the Supreme Court of this State shall be taken within 65 the time hereinafter specified," and in case of such appeal to await the further orders of the Supreme Court.

Complainant says that the aforesaid provision of said Section 20 was an attempt to confer legislative power upon the Circuit Court, and that said Circuit Court, under Sections 1 and 2 of Article IV of the Constitution of Arkansas, can act only in a judicial capacity, and that so much of the language of said Act as directs the court to exercise the legislative function of making rates for the future is void; that upon an appeal being lodged with said court it will proceed with said appeal as any other case or special proceeding before it, exercising only the functions and powers it can or may exercise as a Circuit Court under the Constitution of the State. Complainant therefore alleges that the decision and order of the Railroad Commission on complainant's application for an increase of rates became the final legislative action under the laws of our State, and upon its being entered complainant was authorized to apply to any court having jurisdiction for relief against said rates, and is not required to prosecute an appeal in the State Circuit or Supreme Court from said order, since those courts can and do act only in a judicial capacity in passing upon and reviewing said causes. Complainant says that it took an appeal to the Circuit Court of Pulaski County from the order of the Commission denying it an increase of rates, and subsequent to lodging said appeal in said court filed a motion to dismiss its appeal, and that the said court, on Tuesday, the 31st day of January, 1922, made and entered an order dismissing said appeal without prejudice.

XVIII.

Complainant says that the Railroad Commission was, by the terms of said Act 443, specially delegated to determine what would be reasonable rates to be charged by complainant in the several municipalities served by it, as well as to determine reasonable and fair rates to be charged by it for service outside of municipalities and for service to distributing companies; and that the action of the said Railroad Commission in denying the complainant an increase of rates became the action of the several municipalities. So that by the order of said Commission, made and entered as aforesaid on the 3rd day of September, 1921, complainant is required to maintain in effect in the several municipalities served by it, as well as in the unincorporated towns, the rates and charges and classifications under which it was serving its patrons and consumers in the several distributing plants owned by it in the State of Arkansas at the time it made, on December 31st, 1920, said application for increase of rates. That the rates in effect for domestic users on December 31st, 1920, were the rates that complainant had put into effect on July 1st, 1918; that the rates in effect for industrial users on December 31st, 1920, were the same

as the rates that were put into effect by complainant for industrial users on July 1st, 1918, except the increase of five cents per thousand cubic feet for gas sold for industrial purposes in excess of two hundred thousand cubic feet, which was made effective, as hereinbefore set forth, as to complainant's plants, on January 1st, 1920. Complainant avers that it has had in force and has operated under the domestic schedule of rates which the Railroad Commission held would afford a reasonable and fair return to complainant for the period of three years and a half; that is, from July 1st, 1918, to January 1st, 1922; that it has operated under a schedule of rates for industrial users which the Commission in its order held would afford, together with the domestic rates, a fair and reasonable return to complainant, for a period of two years; that is, from January 1st, 1920, to January 1st, 1922, and during said time has received its compensation for gas delivered to the defendants, Little Rock Gas

& Fuel Company and the Consumers Gas Company, on a percentage basis. That during all of said time it has operated its plant economically, that it has not paid excessive or exorbitant salaries to officers for services performed, and notwithstanding it has, with due regard to the proper exercise of its public duties, used the most rigid economy in its operations, it has been unable, under said rates, to earn a fair and reasonable return on the value of its properties devoted to the public service.

Complainant, in that connection, avers that the fair value of its property used and useful in the public service during all of the above said period was at least eight million dollars; that since the construction of said pipe line system it has expended all funds that could be appropriated for that purpose on renewals, additions to, replacements, and for repair and maintenance of said plant, putting back into the plant every dollar earned other than the sums used to pay interest on its bonds and the amount expended as hereinbefore alleged in retirement of bonds and thereby, complainant says, it has maintained the integrity of the plant so that its functional capacity is as good or better than when operation of same was first begun.

Complainant says that the business of producing and transporting natural gas for public use combines a public service with a mining venture and is the most hazardous of all kinds of public service. All other public utilities, with the exception of water companies, manufacture the basic element of their service, and the duration of their business has no natural limitation, and their owners run no risk of sudden loss of their investment. And as to water companies, their supply is constantly replenished by nature by the fall of rains and the melting of snows. Natural gas, however, cannot be made by man, the supply is limited and exhaustible, and when once exhausted is never regenerated. And when the available supply is exhausted, the natural gas company's business is at an end, and its investment for the purpose of producing and transporting natural gas becomes worthless except for what it would bring as junk.

Complainant further says that the life of gas wells and gas fields in the State of Louisiana are very short and the supply of gas in said State is nearing exhaustion. Complainant has been required to increase its investment year after year not for the purpose of obtaining new or additional patrons or increasing the volume of business done by it, but merely for the purpose of continuing to furnish a constantly diminishing quantity of gas to those it was already obligated to serve. The distance which complainant is now

70 required to transport its gas, the large increases which it has been required to make in its investment in order to get and furnish gas, the increased cost of gas in the field and the increase in complainant's operating expenses and taxes, the far extension of its lines and the increased number of employes necessary, have increased enormously the cost of furnishing gas; that said cost will be increased from year to year as it will become necessary to extend complainant's main and gathering lines into other fields, or to pay an increased cost for gas purchased because of the capital investment necessary to be made by the Reserve Natural Gas Company or other agencies in obtaining gas from other and distant fields from the present source of supply.

Complainant's rates have never been such as to enable it out of earnings to set aside any sum whatsoever for depreciation on or amortization of its said property.

Complainant says that the said Arkansas Railroad Commission's order of September 3, 1921, operated and operates to deprive complainant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States,

71 in that said Commission refused to grant complainant a return on the then fair value of its property used and useful in the public service, but took less than the original cost thereof as the rate base, thereby leaving properties and values belonging to complainant and used and useful in rendering the public service upon which no return was provided to be given.

That by reason of the hazard of the business it is entitled to earn on the fair value of the property, for interest and profit, at least ten per cent; that in addition thereto it is entitled to earn six per cent for depreciation in order to maintain the integrity of its property and the continuity of its service; and in addition to interest and profit and depreciation it is entitled to have its capital investment in the property amortized over a reasonable period, since a utility engaged in the business of producing and transporting natural gas cannot have a perpetual existence, and when the life of the source of supply available to its pipe line system is exhausted will have left only the salvage value that may be obtained from the disposal of its pumping plants, main and distributing lines. Complainant says that the salvage value of its system will not exceed five or six hundred thousand dollars, and that there should be returned to it by

72 way of amortization the difference between its capital investment and the salvage value, so that at the end of the life of the fields available to it as a source of supply it will have recovered its investment.

Complainant further says that in the State of Arkansas the legal rate of interest, in the absence of any contract, is six per cent, and that by contract parties are authorized to charge and receive ten per cent per annum; and that ten per cent per annum is as little as persons who have invested their money in banking and merchandising and other such forms of business expect to receive. And, therefore, complainant says that considering the risk and hazard involved in its said business, an allowance over and above its necessary expenses of ten per cent for interest and profit is an exceedingly low allowance and that such allowance cannot be justified except upon a further allowance of an amortization fund to return the investment to complainant before the exhaustion of the source of its supply of gas, as well conducted business enterprises, such as those named above, receive annual profits of at least ten per cent and besides the investors have at all times the value of their investment in the business not subject to be terminated by an uncontrollable event of nature.

73 Complainant says that an annual return out of earnings of five hundred thousand dollars for amortization is reasonable and fair. That instead of earning annually during said period since July 1, 1918, eight hundred thousand dollars for interest and profit, four hundred and eighty thousand dollars as a depreciation fund to maintain the integrity of the plant and the continuity of the service, and at least five hundred thousand dollars for amortization, complainant's net operating revenue for said period has averaged only approximately six hundred thousand dollars per year. That a schedule of rates can be established that will produce said sums, or that will materially increase complainant's net operating revenue, that will be reasonable and fair and not in excess of the fair value of the service performed.

Complainant says that for the year 1921 its net operating revenue was \$585,002.00 *thousand dollars*, but that during said year complainant did not engage in prospecting or drilling operations and did not expend a normal amount for acquiring leases and acreage and in field operations. That complainant was not justified, under the exceedingly low rates it was compelled to operate under, to make

74 normal expenditures for these purposes; that it could not do so and earn sufficient to provide necessary operating capital and make the necessary additions required to its plant in order to continue service efficiently. Confronted with this situation complainant elected to discontinue for the year 1921 practically all drilling and field operations, and to cut to the lowest possible point expenses for obtaining new acreage. That it would have required an expenditure of at least two hundred and eighty thousand dollars to have carried on these operations on a normal basis, and if complainant had done so its net operating revenue for the year 1921 would not have exceeded \$305,002.00 *thousand dollars*; that while 1921 revenues have been increased by the curtailment of the aforesaid operations, the effect has been only to defer the cost and expense of such operations, which of necessity will have to be incurred in the year of 1922 and succeeding years, if complainant con-

tinues to function as a public utility. Complainant can only resume normal activities in the obtaining of gas acreage and in its drilling and field operations when it is provided with rates that will give it an income that will justify said expenditures. Also, complainant reduced during the year 1921 its other operating expenses to the lowest possible limit, even lower than in its opinion it is possible to operate for any succeeding year. The prices of labor and material
75 have become stabilized and complainant cannot possibly operate for the year 1922, or in the near future, at any further reduced costs.

Complainant says that the effect of maintaining in force the existing rates and of continuing to furnish gas to defendants, Little Rock Gas & Fuel Company and the Consumers' Gas Company of Hot Springs, on a percentage division of collections whereby the complainant sustains the entire loss of the leakage within the systems of said distributing plants is to confiscate and destroy complainant's property; to destroy its ability to make extensions, develop new territory, bring in additional wells, or purchase gas and to continue to serve the public. Complainant says that said rates and charges are unreasonably low and unjust, and complainant, in rendering the public service required of it under said schedule of rates, will be yielding up and giving to the public its property and parts of its property without compensation; that said rates are unreasonable, arbitrary, confiscatory and have the effect of taking complainant's property without due process of law, and of denying it the equal protection of the law, in violation of the Fourteenth Amendment to the Constitution of the United States.

Complainant cannot disregard said rates maintained in force by the defendant, Arkansas Railroad Commission and establish and charge rates that are deemed by it reasonable and compensatory without subjecting itself and its officers to severe penalties for each day's violation of the orders of said Commission, and subjecting itself to suits by each of its consumers to recover damages for failure to either supply them with gas or for charging them more than the rates established by the said Railroad Commission as reasonable; that by reason of these provisions in said Act 124 complainant has no plain, adequate or complete remedy at law, and will suffer an irreparable injury unless jurisdiction is taken by this court and an injunction is granted against the maintenance of the schedule of rates which the said Railroad Commission has held it shall maintain and keep in force.

Wherefore, the premises considered, complainant prays as follows:
First. That the court issue a temporary injunction enjoining defendants, Arkansas Railroad Commission, Little Rock Gas &
77 Fuel Company and Consumers' Gas Company, and the several cities and towns made defendants herein, and each of

them, and all other persons acting by, through or under any of said defendants, from in any wise enforcing each, all and every one of the rates for gas furnished by complainant now in effect and hereinbefore complained of; and from interfering with complainant in its right to establish other, higher and different rates for gas supplied to its patrons in the several municipalities and unincorporated towns supplied by it, as well as customers taking gas from complainant between said towns and cities, and from establishing city border rates for the cities of Little Rock and Hot Springs; and enjoining said Arkansas Railroad Commission, and the members thereof, from entertaining complaints against said complainant on said account, and enjoining the other defendants from making complaints against complainant either before said Arkansas Railroad Commission or before any other tribunal on account of its installing other, higher and different rates, and on account of its establishing city border rates for the cities of Little Rock and Hot Springs, and enjoining all of the defendants from taking any action before any tribunal in the State of Arkansas seeking in anywise to enforce said rates or interfere with complainant in its right to install other, higher and different rates, and the complainant offers to submit to such conditions as may be equitable, proper and just upon the granting of such temporary injunction.

Second. That upon final hearing in this case the court make said injunction perpetual, and that it find that the obligations of the contracts between complainant and the distributing companies, Little Rock Gas & Fuel Company and Consumers' Gas Company, are of no binding force and said contracts have expired, and that an appropriate order be made and entered cancelling same.

Third. Complainant prays for all such other and further relief to which in law or in equity it may be entitled.

MOORE, SMITH, MOORE &
TRIEBER,
W. B. TRUIT,

Attorneys for Complainant.

WELLER & WICKS,
Of Counsel.

79 STATE OF ARKANSAS,
County of Pulaski, ss:

J. R. Munce, being first duly sworn on his oath, deposes and says: My name is J. R. Munce. I am, and for some years have been Vice-President of the Complainant, Arkansas Natural Gas Company, and active in the management of its affairs. Complainant is a corporation organized under the laws of Delaware, and I have full power and authority to verify the above and foregoing bill of complaint in its behalf. I have read the above and foregoing bill of complaint and am familiar with the averments therein contained, and the matters and things therein stated as facts are true, and the matters and things stated upon belief I verily believe to be true.

Subscribed and sworn to before me this — day of February, 1922.

_____,
Notary Public.

STATE OF LOUISIANA,
Parish of Caddo:

J. R. Munce, being first duly sworn on his oath, deposes and says: My name is J. R. Munce. I am, and for some years have been Vice-President of the Complainant, Arkansas Natural Gas Company, and active in the management of its affairs. Complainant is a corporation organized under the laws of Delaware, and I have full power and authority to verify the above and foregoing bill of complaint in its behalf.

I have read the above and foregoing bill of complaint, and am familiar with the averments therein contained, and that the matters and things therein stated as facts are true, and the matters and things stated upon belief I verily believe to be true.

(Signed)

J. R. MUNCE.

Subscribed and sworn to before me this 15 day of February, 1922.
[SEAL.] (Signed) HERBERT B. LANGFORD,

Notary Public.

My commission expires: Continuous.

EXHIBIT A.

At a Regular Session of the Arkansas Corporation Commission Held in Its Office, at Little Rock, under Date of January 24th, 1921.

Case No. 435.

In the Matter of the Application of THE ARKANSAS NATURAL GAS COMPANY for Certificate of Indeterminate Permit to Operate Pipe Lines and Distributing Lines for the Distribution and Sale of Natural Gas within the Various Towns in the State of Arkansas.

Certificate of Indeterminate Permit.

The Arkansas Natural Gas Company, having on the 20th day of January, 1921, filed with this Commission its application for certificate of indeterminate permit to maintain and operate pipe lines and gas distribution systems in the cities of Pine Bluff, Sheridan, Mablevale, Alexander, Bryant, Beauxite, Benton, Haskell, Gifford, Perla, Malvern, Donaldson, Arkadelphia, Gum Springs, Gurdon, Boughton, Prescott, Bierne, Emmet, Garland City, Fouke, Traskwood and Doddridge, Hope, Springdale, Arkansas, and vicinities adjacent to said cities, and it being made to appear by evidence satisfactory to the Commission that said applicant is a corporation organized and existing under and by virtue of the laws of the State

of Delaware, but authorized to do business in the State of Arkansas as a foreign corporation, and that said applicant has for a number of years owned and held franchises from the cities and towns above mentioned authorizing it to maintain and operate said pipe lines and gas distribution systems within said cities and towns, and that said applicant is now and has been for a considerable period of time, actively engaged in the operation of said utilities in said cities and towns by virtue of said franchises, and that said applicant
81 has filed with the clerk of each of said municipalities a written declaration, legally executed, surrendering all said franchises heretofore issued to it by the said municipalities, and that by reason of said facts said applicant is now by operation of law entitled to receive, in lieu of said franchises, an indeterminate permit under the terms of Act 571 of the Acts of the General Assembly of Arkansas, for the year 1919.

Now, therefore, the Arkansas Corporation Commission does hereby certify that the Arkansas Natural Gas Company is on and after this date, entitled to and a holder of an indeterminate permit to maintain and operate each and every of the utilities above mentioned and described, in the municipalities and vicinities aforesaid.

(Signed)

ARKANSAS CORPORATION
COMMISSION,
By T. E. WOOD,
Chairman.
HOGAN OLIVER,
JNO. T. BURKETT,
Commissioners.

Attest:

GUY A. FREELING,
Secretary.

EXHIBIT B.

This agreement, made and entered into this sixteenth day of February, A. D. 1910, by and between the Arkansas Natural Gas Company, a corporation of the State of Delaware, (hereinafter for convenience termed the "Arkansas Company"), and the Pulaski Gas Light Company, a corporation of the State of Arkansas, (hereinafter for convenience termed the "Pulaski Company"), witnesseth:

That, whereas, the said Pulaski Company represents that under its charter powers and franchises and supplements or amendments thereto, it has the lawful right, among other things, to acquire, transport, pipe, deal in, furnish, supply and sell natural gas to the Cities of Little Rock and Argenta and to patrons, customers and consumers within the Cities of Little Rock and Argenta, and their environs, in the State of Arkansas, and while it may have, hold, possess, operate and enjoy for such purposes lands in fee simple or other less estate, and notwithstanding it has no such lands, nevertheless, it may otherwise bargain for, purchase, obtain and take for said purposes natural gas from producers thereof, and desires so to do; and,

Whereas, the said Arkansas Company represents that it has likewise under its charter powers and franchises the lawful right among other things, to acquire, operate for, produce, transport, pipe, deal in, furnish, supply and sell natural gas to all and all manner of patrons and consumers and for such purposes has and holds certain lands and natural gas wells located in the Parish of Caddo, in the State of Louisiana, and elsewhere, from which it desires to furnish natural gas to the said Pulaski Company for distribution to the Cities of Little Rock and Argenta, and to and among its patrons and consumers within the said Cities of Little Rock and Argenta, and their environs, and the said Pulaski Company is willing thereto; and,

Whereas, the said Arkansas Company and the said Pulaski Company as preliminary to these presents, did make and enter into that certain agreement bearing date the 8th day of December, 1909, a

copy of which is hereto attached, and made a part hereof;
83 and the Pulaski Company did obtain likewise preliminary to these presents and for the purposes thereof that certain ordinance of the said City of Little Rock, known as No. 1539 and entitled "An Ordinance amending Ordinance No. 392, entitled 'An Ordinance in relation to the Pulaski Gas Light Co., and granting certain rights and privileges to said Company,' passed the 11th day of January, 1892, a copy of which said ordinance No. 1539 is hereto attached and made a part hereof, reference had to the said agreement and the said ordinance the same will fully and at large appear:

Now, therefore, it is for and in the consideration of the premises, and the covenants, agreements, stipulations and conditions of these presents on their respective parts to be done, paid, kept, observed or performed, that the parties thereto have covenanted, promised and agreed, and by these presents do covenant, promise and agree to and with each other, and each for their respective parts in manner following, that is to say:

First. That the said Pulaski Company shall purchase, take and pay for, in the way and manner hereinafter set forth, from the said Arkansas Company all the natural gas which it may need for the supply of the Cities of Little Rock and Argenta and of its patrons and consumers within the limits of said Cities of Little Rock and Argenta, and their environs, the said environs not to exceed a limit of five miles from the respective city limits in any direction; and the said Arkansas Company shall sell and furnish from the lands now held by it, or such other lands as it may acquire, that may be tributary to the system of pipe line contemplated by these presents, to the said Pulaski Company all the natural gas it, the said Pulaski Company, may need for said purposes in the way and manner and subject to the conditions hereinafter set forth, and during the term of this contract no natural gas shall be furnished or delivered directly or indirectly by said Arkansas Company for use or distribution to said Cities of Little Rock and Argenta, and the patrons and consumers thereof in Little Rock and Argenta, and their environs, except to said Pulaski Company.

Second. That the said Arkansas Company shall construct, complete, maintain and operate for the purposes of these presents
84 a pipe line of sufficient capacity to transport and deliver twenty-five million cubic feet of natural gas each day of twenty-four hours at a pressure of not less than twenty pounds at its point of delivery at Little Rock, with adequate, necessary and proper compressing stations from its lands in the Parish of Caddo, in the State of Louisiana, having a terminus at or near the city limits of said City of Little Rock, at a point to be selected and agreed upon by and between said Pulaski Company and the said Arkansas Company; that the work of constructing the said pipe line shall be commenced not later than ninety days from the 20th day of January, 1910, and completed, fully equipped and in operation for the transportation of gas to the said City of Little Rock within fifteen months from the said 20th day of January, 1910; and that the said Arkansas Company shall constantly keep and maintain the said lines and the said stations in good order, repair and condition for the transportation and delivery of natural gas to the Pulaski Company, as herein agreed upon.

Third. That the said Arkansas Company shall furnish all of the said natural gas through a reducing station to be erected, maintained and run by it at the end of the line of the said Arkansas Company at or near the city limits of said City of Little Rock, to be selected as aforesaid, or through such other or additional line or lines, station or stations, as the said Arkansas Company may elect to have or employ at a pressure sufficient to produce a pressure of eight ounces for the low pressure system of the Pulaski Company, and such other pressure as may be needed for the high pressure system of the Pulaski Company.

Fourth. That the said Pulaski Company shall proceed to put, alter, change and convert into proper condition for the reception, transportation, supply and sale of natural gas, all of its present plant or distributing system, and where no plant or system has already been installed for the supply of gas, it shall install therein a proper, efficient and sufficient plant or system for the reception, transportation, supply and sale of natural gas when necessary and required under said ordinance; that the said Pulaski Company shall, at its own proper cost, charge, and expense, furnish, install, operate and maintain all manner of regulators and applicances needed for
85 the proper and safe reception, transportation, distribution and supply of the said natural gas after the same shall have been delivered to it, as aforesaid; and that everything shall be completely and perfectly ready to properly receive the said gas and supply the same within fifteen months from the twentieth day of January, 1910.

Fifth. That the said Pulaski Company shall extend its systems from time to time, and whenever and wherever responsible customers can be secured on an average of one to each hundred feet of line necessary to be laid to reach them, and conduct a natural gas business within the limits of the said Cities of Little Rock and Argenta

and environs to the full limit of every opportunity in harmony with these presents; that the said Pulaski Company shall not at any time, nor under any circumstances, whatsoever, supply natural gas, save by, through and by means of gas meters to be furnished at its own proper charge, cost and expense, of sufficient capacity and proper mechanism accurately to measure and record the amount of gas passing through them; that the said Pulaski Company shall have, use and employ constantly throughout its entire plant and systems wheresoever located all proper appliances, methods and material for the purposes thereof, and at all times keep the whole in good order and condition and reasonably free from leaks of every kind.

Sixth. That after the delivery of the said gas to the said Pulaski Company as aforesaid, no dominion or control thereof whatsoever, shall be or remain in the said Arkansas Company, nor shall it, the said Arkansas Company, thereafter be responsible for or on account of anything which may be done, happen or arise, touching the said gas, and the said Pulaski Company shall at all times, and from time to time, keep free, save harmless and indemnify the said Arkansas Company from all and all manner of claims, suits and damages on account of any conduct, act or thing touching the said gas after delivery thereof to the said Pulaski Company as aforesaid.

Seventh. That these presents are made and accepted with full knowledge and notice of, and expressly subject to all and singular such duties as the said Arkansas Company may owe in other areas of consumption than those hereinbefore set forth, but
86 never in such a way or manner as to permit of discrimination against the said Pulaski Company, nor in any manner as to relieve said Arkansas Company from the full exercise and effort on its part at all times to drill and develop wells in its said gas territory, and furnish and supply to said Pulaski Company its requirements of natural gas, and which said Arkansas Company hereby expressly agrees to do.

Eighth. That these presents are also made and accepted with full knowledge and notice of and subject to all such causes and accidents in the course of the business of producing, transporting and supplying natural gas, as may through no wilful fault or neglect of the said Arkansas Company prevent, hinder or restrain the delivery of the said gas in whole or in part and no charge or claim shall be made or allowed against the said Arkansas Company on account of any failure or failures to deliver said gas for any such reason or reasons, if it has duly exercised every reasonable effort to produce and furnish to said Pulaski Company its requirements, but it is provided, always, nevertheless, that an entire failure of supply by the said Arkansas Company for a period of any consecutive ninety days for any such reason or reasons shall terminate these presents, at the option of said Pulaski Company, and moreover, if during the said period of ninety days the said Pulaski Company, may be able to obtain natural gas from other source than the said Arkansas Company, at a reasonable market price, it shall be its privilege so to do for said period of ninety days, but only for the purpose of supplying domestic con-

sumers; and such gas shall be taken and deemed to be the same as if furnished by the said Arkansas Company and charged to it in settlement; and it is further provided always in this behalf, in the event of a partial failure of a sufficient supply of natural gas for all purposes, that the said Pulaski Company shall shut off all manufacturing consumers, or sufficient of them to keep up an adequate supply for domestic consumers.

Ninth. That the said Arkansas Company shall have the right, by its duly authorized agents or employes, at all reasonable times, to enter upon, examine, inspect and test the plant and systems of the

87 Pulaski Company, including, among other things, its meters, stations, lines, connections and service; and likewise, the said

Pulaski Company shall have the right, by its duly authorized agents and employes, at all reasonable times, to enter upon, examine, inspect and test the plant and systems of the said Arkansas Company, including among other things, its meters, stations, lines, connections, wells and service.

Tenth. That all contracts proposed in good faith, unless covered by general form already agreed upon, for the supply of natural gas to consumers, whether domestic or manufacturing, shall, before execution and delivery, be submitted to the said Arkansas Company by the said Pulaski Company, and in the event of disapproval of any such contract or contracts by the said Arkansas Company, no natural gas shall be furnished therefor under these presents, but the said Pulaski Company obtain natural gas for such a contract from other sources.

Eleventh. That the said Arkansas Company shall be entitled to have and receive from the said Pulaski Company for natural gas delivered by it under these presents, and the said Pulaski Company shall well and truly pay unto the said Arkansas Company out of the proceeds collected from all sales of natural gas at the time or times and in the way and manner hereinafter provided, to-wit:

From natural gas sold for domestic purposes during the first year of supply under these presents, sixty per centum, based upon the maximum rates permitted by said Ordinance 1539.

From natural gas sold for domestic purposes during the second year of supply, under these presents, sixty-two and one half per centum based upon the maximum rates permitted by said Ordinance 1539.

From natural gas sold for domestic purposes during the third year and each year thereafter under these presents, sixty-six and two-thirds per centum, based upon the maximum rates permitted by said Ordinance 1539.

From natural gas for manufacturing purposes during the first year of supply under these presents, seventy per centum.

88 From natural gas sold for all manufacturing purposes during the second year of supply under these presents, seventy-two per centum.

From natural gas sold for manufacturing purposes during the

third and each year thereafter under these presents, seventy-five per centum.

And it is further provided always, in this behalf, that while the proportion due the said Arkansas Company is fixed and based upon the maximum rates provided by Ordinance No. 1539, as hereinbefore set forth, nevertheless, the said Pulaski Company shall not be by these presents prevented, hindered or restrained for its own part and in its own behalf, from lowering or altering the said rates. In the event the Pulaski Company shall sell natural gas at rates lower than the maximum price fixed in said ordinance, then the proportion due said Arkansas Company shall be based on such lower rates; provided however, said Arkansas Company if dissatisfied with the proportion it will receive on the basis of such lower rates, may thereupon terminate this agreement, after six months' notice in writing of its intention to do so, unless the Pulaski Company, before the expiration of the six months' notice, restores the division of proceeds collected based upon such maximum rates or such other rates as may be otherwise agreed upon.

And, moreover, the said Pulaski Company shall be entitled to have and retain at all times all sums collected from its patrons and consumers constituting the difference between the actual consumption of gas and the minimum bill of one dollar monthly service which may be charged by the said Pulaski Company under the provisions of said Ordinance No. 1539.

Twelfth. That notwithstanding the proportions fixed, determined and due to the said Arkansas Company, as herein set forth, nevertheless in the event the Pulaski Company shall be required to supply natural gas to the said Cities of Little Rock and Argenta, or the County of Pulaski, as municipalities for special privileges, the said Arkansas Company shall contribute thereto, that is to say, for all such natural gas as it shall be entitled to receive only two cents per thousand cubic feet instead of an amount fixed by the said proportion.

89 Thirteenth. That for and during the first year after the introduction of natural gas into the City of Little Rock, under these presents, the said Pulaski Company shall be entitled to have natural gas in reasonable quantities, free of charge, for the purposes of demonstration and its own advertisement.

Fourteenth. That should any tax be lawfully levied or exacted upon any gross receipts by any public authority computed upon the basis of gross receipts and the said natural gas as an entirety, the same shall be borne and paid by the parties to these presents, proportionately to their respective interests in the said gross receipts, but if any such tax be levied or exacted upon their respective proportions separately, then each of said parties shall bear and pay only their respective taxes as thus levied and exacted.

Fifteenth. That these presents are made and accepted with full knowledge of and subject to the terms, conditions and requirements of said Ordinance No. 1539, and the said Arkansas Company shall

and hereby expressly agrees to keep free, save harmless, and indemnify the said Pulaski Company of and from all liability under that certain bond of ten thousand dollars conditioned for the actual construction of the pipe line and the commencement and completion of the said construction, in so far as the said construction, commencement and completion of said pipe line to the City of Little Rock may be concerned, reference had to the said bond the same will fully and at large appear.

Sixteenth. That the said Pulaski Company shall at all times keep full, complete and accurate consumers' books and records of all things had and done, touching the distribution and sales of natural gas under these presents, according to approved methods, and shall include, among other things, full and detailed records of all meters, their location and the register shown by them from month to month; and that the said books and records shall at all reasonable times be open to the examination and inspection of the agents and employees of the said Arkansas Company, properly authorized.

Seventeenth. That the said Pulaski Company shall, on or before the twentieth day of each and every calendar month during the term of these presents, well and truly pay unto the said Arkansas Company all sums due it from collections made by it, the said Pulaski Company, the then previous month and each payment shall be accompanied by a full, complete and accurate statement in detail of the items composing or out of which the said sums are produced.

Eighteenth. That for the purposes of distribution of the proceeds realized from the sales of gas under these presents, during the first five years of this agreement, "domestic purposes" shall be taken to mean and relate to such gas as is sold at the net rate of fifteen cents and over, per thousand cubic feet, and "manufacturing purposes" shall be taken to mean and relate to such gas as is sold at a net rate of less than fifteen cents per thousand cubic feet. Should the parties hereto desire, after the first five years of this agreement, to change or alter the basis or definition of "domestic" or "manufacturing purposes", then such change or alteration shall be agreed upon by the parties hereto in writing.

Nineteenth. That these presents shall continue and remain in full force, for the term of said Ordinance 1539, and any extension or renewal thereof, and shall extend to, include, benefit and bind the successors and assigns of the parties hereto, respectively.

In witness whereof, the said parties to these presents have caused their names, by the hands of their respective Presidents, and their respective common and corporate seals, to be hereunto affixed, the day and year first above mentioned.

ARKANSAS NATURAL GAS CO.,
 (Signed) By J. C. TREES,
Pres.

Attest:

(Signed) W. B. BEECHER,
 [SEAL.] *Sec.*

PULASKI GAS LIGHT CO.,
 (Signed) By HENRY M. DAWES,
Pres.

Attest:

(Signed) E. CHANDLER BEACH,
 [SEAL.] *Secy.*

EXHIBIT B-1.

This agreement, Made and entered into this Nineteenth day of February, A. D. 1910, by and between the Arkansas Natural Gas Company, a corporation of the State of Delaware, and the Pulaski Gas Light Company, a corporation of the State of Arkansas, witnesseth:

That, whereas, the parties hereto have heretofore entered into an agreement of even date herewith, a copy of which said agreement is hereto attached and made a part of this agreement; and,

Whereas, in anticipation of said contract between the parties, an agreement was entered into with "The Business Men's League of Little Rock, Arkansas", by the Pulaski Gas Light Company, a copy of which agreement is also hereto attached and made a part hereof:

Now, therefore, it is agreed between the parties hereto that the contract so entered into between said Pulaski Gas Light Company and the Business Men's League of Little Rock, Arkansas, shall be carried into effect by the Pulaski Gas Light Company, and natural gas sold and distributed in accordance with the terms and at the rates therein mentioned.

As the rates in said agreement with said Business Men's League of Little Rock are different from those provided for in the agreement made and entered into this day between the parties hereto, it is agreed that this shall operate as a modification thereof, in accordance with the terms of the other agreement between these parties during the five years therein provided for only. This agreement is executed contemporaneously with said other agreement between the parties hereto, of even date herewith, and shall be regarded and considered as a part thereof.

In the event said Pulaski Company shall sell natural gas for manufacturing purposes for ten cents per thousand cubic feet, 92 the said Arkansas Company shall be entitled to have and receive, in addition to the foregoing proportions, for each one thousand cubic feet of gas thus sold, the sum of one-half cent.

In witness whereof, the parties hereto have caused this agreement to be executed by their respective duly authorized officers, and their corporate seals to be hereunto affixed, on the day and year first above set forth.

ARKANSAS NATURAL GAS COMPANY,

(Signed) By J. C. TREES,
President.

Attest:

(Signed) W. B. BEECHER,
Asst. Secy.

PULASKI GAS LIGHT COMPANY,

(Signed) By H. M. DAWES,
President.

Attest:

(Signed) E. CHANDLER BEACH,
Secy.

EXHIBIT C.

Memorandum of Agreement between the Pulaski Gas Light Company and the Arkansas Natural Gas Company.

The parties hereto will co-operate in procuring a franchise for the distribution of natural gas in the City of Little Rock and Argenta, and such franchise shall either be taken in the name of the Pulaski Gas Light Company, or on the execution of the contract hereinafter provided for, be assigned to them.

When said franchise has been procured and within ninety (90) days thereafter, the parties hereto shall enter into an agreement whereby the Arkansas Company shall covenant on its part to construct a pipe line from its gas fields to a point of connection with the distributing mains of the Pulaski Company at or near the city limits of the City of Little Rock with a delivery capacity of 25,000,-000 cubic feet per day of 24 hours and shall also covenant to deliver through said pipe line into said distributing mains, if required by the Pulaski Company, said amount at the rate of 25,000,000 feet of gas per day of 24 hours, subject to such interruptions as are usual in the conduct of business of supplying natural gas.

Said contract shall further provide that said gas shall be exclusively distributed by the Pulaski Company to the inhabitants of the City of Little Rock and its environs, for domestic and other uses. And, as compensation for so distributing the same, the Pulaski Company shall retain as its own property the following percentages of the gross sums actually collected by it for the gas so distributed, namely:

For gas distributed for domestic purposes during the first year of such distribution 40 per cent of such collections.

For gas distributed for domestic purposes during the second year of such distribution 37½ per cent of such collections.

94 For gas distributed for domestic purposes during the third year and thereafter of such distribution 33½ per cent of such collections.

For gas distributed for manufacturing purposes during the first year of such distribution 30 per cent of such collections.

For gas distributed for manufacturing purposes during the second year of such distribution 28 per cent of such collections.

For gas distributed for manufacturing purposes during the third year and thereafter 25 per cent of such collections.

Said contract shall further provide that the Pulaski Company shall so arrange its low pressure systems as to, as nearly as practicable, supply gas at a pressure not exceeding 8 ounces.

Said contract shall further provide that said gas shall be supplied by the Arkansas Company at the said point of connection at a pressure of not less than 20 pounds.

A time shall be fixed in said contract by which the Arkansas Company shall be prepared to deliver and the Pulaski Company to receive and distribute said gas. Unless otherwise provided for by mutual agreement by the parties, gas shall be supplied by the Pulaski Company to its consumers at the maximum rates fixed in said franchise so to be obtained as aforesaid. Said franchise must be satisfactory to both parties to this contract.

If any gross receipts tax or exaction shall be levied, either by any city or by any other public authority, computed upon the gross receipts from the sale of gas as an entirety, each party hereto shall pay their proportion of such gross receipts tax in the same proportion as the receipts are divided between them. If any such tax is levied only on the interest of either Company on said gross receipts, then such company shall stand the entire tax on such interest.

If under the franchise the Pulaski Company shall be required to furnish gas free to the city or to any of its departments, the Pulaski Company shall pay therefor to the Arkansas Company 2 cents per 1,000 cubic feet.

Said contract shall provide that settlements shall be made by the parties hereto on the 25th of each month for all collections made during the preceding month, accompanied in each case by proper statements.

Said contracts shall provide and remain in force during the term of said franchise, unless the Arkansas Company be unable to supply the amount of gas necessary for domestic consumption.

Said contract shall contain such other provisions as may be usual to contracts of this character and necessary to carry out the details of the general agreement hereby made.

(Signed) PULASKI GAS LIGHT COMPANY,

By RUFUS G. DAWES,

Vice President.

ARKANSAS NATURAL GAS COMPANY,

By J. C. FREES,

President.

December 8, 1909.

EXHIBIT D.

An ordinance amending ordinance No. 392, entitled, "An ordinance in relation to the Pulaski Gas Light Company and granting certain rights and privileges to said company," passed by the City Council of the City of Little Rock, Arkansas, on January 11th, 1892.

Be it ordained by the City Council of the City of Little Rock, Arkansas:

Section 1. That Section 1 of Ordinance No. 392, entitled "An Ordinance in Relation to the Pulaski Gas Light Company and granting certain rights and privileges to said Company," passed by the City Council of the City of Little Rock, Arkansas, on January 11th, 1892, shall be and the same is hereby amended so as to be and read as follows:

"Section 1. That in addition to the rights and privileges formerly held by the Little Rock Gas Company under its charter and the ordinance of April 5th, 1860, (Section 247 and 248, Digest of City Ordinances of 1892), afterwards acquired and now held by the Pulaski Gas Light Company, there is hereby granted to said Pulaski Gas Light Company, its successors and assigns, the rights and privileges of laying, maintaining, repairing and extending its mains, pipes and other appliances and fixtures in and through all the streets and other public places of said city and additions thereto, subsequently made or hereafter to be made, for the purpose of supplying light, heat, power, natural gas and artificial gas to the inhabitants of said city, and its additions, but the rights and privileges granted by this ordinance shall be enjoyed only for a term of forty-eight (48) years from and after January 11th, 1892."

Section 2. That Section 2 of Ordinance No. 392, entitled "An Ordinance in relation to the Pulaski Gas Light Company and granting certain rights and privileges to said Company," passed
97 by the City Council of the City of Little Rock, Arkansas, on January 11th, 1892, shall be and the same hereby is amended so as to be and read as follows:

"Section 2. That in consideration of the grant and recognition of rights and privileges above made, said Pulaski Gas Light Company shall pay to said City, for the period of forty-eight (48) years from the passage of this ordinance, the following sums: For the first year that it supplies natural gas, the sum of One Thousand Dollars, (\$1,000.00); for the second year that it supplies natural gas the sum of Two Thousand Dollars (\$2,000.00); for the third year that it supplies natural gas, the sum of Three Thousand Dollars (\$3,000.00); for the fourth year that it supplies natural gas, the sum of Four Thousand Dollars (\$4,000.00); and for each subsequent year thereafter that it supplies natural gas, the sum of Five

Thousand Dollars (\$5,000.00) and for each year that it supplies artificial gas only, the sum of Five Hundred Dollars (\$500.00). Said payments shall be made on or before the 31st day of January in each covering the preceding calendar year."

Section 3. That Section 3 of Ordinance No. 392, entitled "An Ordinance in Relation to the Pulaski Gas Light Company and granting certain rights and privileges to said Company," passed by the City Council of the City of Little Rock, Arkansas, on January 11th, 1892, shall be and the same is hereby amended so as to be and read as follows:

"Section 3. The rates for artificial gas furnished after December 31st, 1909, and during the remainder of said period of forty-eight (48) years from January 11th, 1892, shall not exceed One Dollar and Thirty-five Cents (\$1.35) per thousand cubic feet, with a discount of ten cents (\$.10) per thousand feet if payment is made at the office of the Company on or before the tenth day of each month for all gas used during the preceding month. The rates for natural gas furnished after December 13th, 1910, and during the re-
98 mainder of said period of forty-eight (48) years from the above date shall not exceed Fifty Cents (\$.50) per thousand cubic feet. Said Company may make special contracts for supplying gas at rates lower than those herein specified. When natural gas is once furnished to the City of Little Rock, said Company shall suspend the supplying of artificial gas, and furnish natural gas as long as it can procure an adequate supply of natural gas from the Caddo Gas Fields for the City of Little Rock."

Section 4. That Section 4 of Ordinance No. 392 entitled "An Ordinance in Relation to the Pulaski Gas Light Company, and granting certain rights and privileges to said Company," passed by the City Council of the City of Little Rock, Arkansas, on January 11th, 1892, shall be and the same is hereby amended so as to be and read as follows:

"Section 4. Said Company shall make no extra charge for meters furnished to regular consumers, nor shall its successors or assigns, but the same shall be furnished free of charge; provided, however, that said Company in every case where a consumer's bill is less than One Dollar (\$1.00) for each service, may charge a minimum rate of One Dollar (\$1.00) per month for each service connected, so long as natural gas shall be supplied."

Section 5. That Section 5 of Ordinance No. 392, entitled "An Ordinance in Relation to the Pulaski Gas Light Company, and granting certain rights and privileges to said Company," passed by the City Council of the City of Little Rock, Arkansas, on January 11th, 1892, shall be and the same is hereby amended so as to be and read as follows:

"Section 5. Artificial gas furnished by said Company shall be of as good quality of material, as free of sulphur and air, and shall give as good quality of light as is obtainable and is furnished to cities of similar size elsewhere."

99 Section 6. That Section 6 of Ordinance No. 392, entitled "An Ordinance in Relation to the Pulaski Gas Light Company, and granting certain rights and privileges to said Company" passed by the City Council of the City of Little Rock, Arkansas, on January 11th, 1892, shall be and the same is hereby amended so as to be and read as follows:

"Section 6. Where a gas main is laid in a street and one or more property owners residing immediately beyond the terminus of said main agree to use and guarantee to pay for the gas to the extent of eight per cent. on the cost of the extension of said main, when said extension is ordered by a two-thirds vote of the City Council until said Company shall have extended their main for their accommodation, the size of the main to be determined by the City Council when the extension is ordered by the City Council."

Section 7. In case there should be at any time a lack of sufficient supply of natural gas for all the consumers of the City of Little Rock, then the Pulaski Gas Light Company, or its successors, or assigns, may cut off the supply from the manufacturers in whole or in part, reserving said supply for domestic consumers, and in case said Pulaski Gas Light Company shall fail or refuse to do so, the City Council of the City of Little Rock shall have authority to cause the same to be done.

Section 8. It is understood that in bringing natural gas to the City of Little Rock from the Caddo Gas Fields, the Pulaski Gas Light Company, its successors or assigns, may extend its lines to other cities and it is agreed that the rate fixed for natural gas in the City of Little Rock shall be as low as the lowest rate given to any city being supplied from said gas line located more than One Hundred and Fifty miles from the Caddo Gas Fields.

Section 9. This ordinance shall be in full force and effect on and after its passage, approval and publication, provided said Pulaski Gas Light Company shall file with the City Clerk its written acceptance hereof within thirty days from the date of its passage, and shall further file a good and sufficient bond in the sum of Ten Thousand Dollars, (\$10,000.00) to be approved by the Board of Public Affairs, conditioned that the grantee herein named shall begin actual construction of said line within ninety days from the date of passage of this ordinance, and complete said gas line and begin the distribution of natural gas in the City of Little Rock within fifteen months thereafter, and conditioned that should the Pulaski Gas Light Company, its successors or assigns, fail or refuse to comply with the conditions of said bond, the amount of said bond shall be forfeited to the City of Little Rock as liquidated

damages for such failure or refusal; and in case the Pulaski Gas Light Company, its successors or assigns, shall not begin the work of construction looking towards the bringing of natural gas to the City of Little Rock within ninety days from the passage of this Ordinance, or shall not complete the same within eighteen months from the passage of this ordinance, in either event this ordinance shall cease, be inoperative and become null and void, and the rights, privileges and powers of the Pulaski Gas Light Company shall revert back to and be controlled by Ordinance No. 392, entitled "An Ordinance in relation to the Pulaski Gas Light Company and granting certain rights and privileges to said Company," passed by the City Council of the City of Little Rock, Arkansas, on January 11th, 1892.

101

EXHIBIT E.

Contract.

Articles of agreement, made and entered into between the Business Men's League of Little Rock, Arkansas, a corporation organized under the laws of the State of Arkansas, party of the first part, and the Pulaski Gas Light Company, a corporation organized and doing business in the City of Little Rock, Arkansas, party of the second part.

Witnesseth:

That, whereas, The Business Men's League has been and is working for the upbuilding of the City of Little Rock, and the reduction in the cost of fuel in order that the City may properly be developed, and in order to accomplish this result has been endeavoring to get a supply of natural gas from *which is known as the "Caddo Fields"* in the State of Louisiana, and for this purpose has been negotiating with the Pulaski Light Company, now supplying artificial gas in the City of Little Rock, to bring or cause to be brought natural gas to be supplied through its lines to the people of the City of Little Rock; and

Whereas, the Pulaski Gas Light Company will need the efforts of the Business Men's League in procuring at reasonable cost the right-of-way for laying mains to reach the city, and for such service and such other consideration herein named agrees to furnish natural gas to the people of the City of Little Rock at certain prices herein-after named:

Now therefore, in consideration of the sum of One Dollar to it in hand paid by first party, the receipt of which is hereby acknowledged, and the undertaking of the Business Men's League to render assistance to secure at reasonable cost the right-of-way for laying mains to the City of Little Rock, and the further consideration of the services of the Business Men's League in assisting second party as well as the City of Little Rock in working out the terms of satisfactory amendments to its franchise under which natural gas can be supplied to the City of Little Rock, the party of the second part

hereby agrees that in case amendments which it will accept
102 are made to its franchise by the City Council of the City of
Little Rock, it will for a period of five years after natural
gas is brought to the City of Little Rock furnish the same at the
following schedule of prices to consumers within the present or
future corporation boundaries of the City of Little Rock whether
by extension of the corporate limits or the annexation of other
municipalities.

To persons or corporations consuming 3,000,000 cubic feet or
more of gas per month not to exceed 10 cents per M cubic feet,
net.

To persons or corporations consuming 1,000,000 cubic feet, or
more of gas per month, and less than 3,000,000 cubic feet, not to
exceed 12½ cents per M cubic feet, net.

To persons or corporations consuming 500,000 cubic feet, or
more and less than 1,000,000 cubic feet per month, not to exceed
20 cents per M cubic feet, net.

To persons consuming 100,000 cubic feet or more of gas per month
and less than 500,000 cubic feet, not to exceed 25 cents per M cubic
feet, net.

To domestic consumers not to exceed 40 cents per M cubic feet
for the first 5,000 cubic feet in any one month, and for all in excess
of 5,000 cubic feet in any one month by one service 30 cents per
M cubic feet, a minimum charge of \$1.10 per month to be made
in all cases.

The contract is for the use and benefit of the people of the City
of Little Rock, and may be enforced by any person or corporation
interested.

The above prices are based upon bills being paid at the Company's
office during the first ten days of the month succeeding the service,
but if not so paid the Company may add thereto ten per cent to
cover cost of collection.

The above rates for manufacturing purposes shall be extended
to manufacturing plants outside the corporate limits of the City
103 of Little Rock and within five miles of such corporate limits
provided such manufacturing plants shall pay the expense
of laying the pipe line from the City limits to such manu-
facturing plants.

The parties hereto agree to all the foregoing obligations and have
signed the same this 15th day of January, 1910.

The Company reserves the right when in its discretion the Company deems it necessary to so do, in order to protect the supply to domestic consumers, to discontinue or suspend in whole or in part the supply of gas to others than domestic consumers.

LITTLE ROCK BUSINESS MEN'S LEAGUE.

W. W. KAVANAUGH,
President.

H. F. AUTEN,
Secretary.

PULASKI GAS LIGHT COMPANY.

H. M. DAWES,
President.

E. C. BEACH,
Secretary.

Memorandum of agreement between the Arkansas Natural Gas Company, a corporation of the State of Delaware, hereinafter designated the "Arkansas Company," and the Pulaski Gas Light Company, a corporation of the State of Arkansas, hereinafter called the "Pulaski Company."

1. This Agreement is supplemental to and amendatory of a certain other agreement (hereinafter termed the "Original Agreement") between the parties hereto, dated February 16, 1910, relating to the furnishing by the Arkansas Company to the Pulaski Company and the distribution by the Pulaski Company in the cities of Little Rock and Argenta and their immediate vicinity of natural gas upon certain terms and conditions stated in such agreement to which reference is hereby made.

2. The certain agreement entered into between the same parties contemporaneous with the Original Agreement relating to the supplying of gas by the Pulaski Company under the original agreement at the prices and rates set forth in a certain agreement between the Pulaski Company and the Business Men's League, is hereby rescinded.

3. It is agreed that the Pulaski Company may supply gas to the City of Little Rock and its inhabitants at the prices and upon the terms and conditions set forth in said agreement with the said Business Men's League, a copy of which agreement is hereto attached, and that the collections received from gas so supplied shall (notwithstanding anything contained in the original agreement as hereinafter amended), be divided between the parties hereto in the same proportion as though said gas were supplied at the maximum rate set forth in Ordinance No. 1539 of the City of Little Rock. It is intended to endeavor to procure the modification of said contract

with the Business Men's League so as to fix the maximum rate to consumers of 1,000,000 cubic feet of gas or more per month, at 12½ cents per thousand cubic feet net, and the furnishing 105 of gas at such price is hereby assented to by both parties to this agreement, and the collections therefor shall (notwithstanding anything contained in the original agreement as herein-after amended), be divided between the parties hereto in the same proportions as though said gas were supplied at the full rate fixed by said Ordinance No. 1539. It is contemplated that in consideration of the procuring of such change in said contract with the Business Men's League the Pulaski Company may be required to either increase the bond given under Section 9 of Ordinance No. 1539 to \$30,000, or to give an additional bond of \$20,000, and in either such event the Arkansas Company hereby assumes the same obligation with respect to said additional or increased bond as is provided in paragraph numbered fifteen of the Original Agreement with respect to the \$10,000 bond mentioned therein.

4. It is agreed that if any consumer supplied by the Pulaski Company under the provisions of the original agreement shall become delinquent the Arkansas Company may serve thirty days' notice upon the Pulaski Company to discontinue service to such consumer, and if the service is continued after said thirty days, while such consumer is delinquent, the Pulaski Company shall be responsible for the payment of the amount due from such consumer for gas supplied after said thirty days.

5. The now existing franchises of the Pulaski Company not requiring said Company to furnish free gas in exchange for special privilege within the meaning of paragraph numbered twelfth of the original agreement, it is now agreed that the Pulaski Company will not supply gas in exchange for special privileges within the meaning of said paragraph numbered twelfth without the assent of the Arkansas Company.

6. Paragraph numbered eleventh of the original agreement is hereby amended so as to be and read as follows:

"Eleventh. That the said Arkansas Company shall be entitled to have and receive from the said Pulaski Company for natural gas delivered by it under these presents, and the said Pulaski Company shall well and truly pay unto the said Arkansas Company 106 out of the proceeds collected from all sales of natural gas at the time or times and in the way and manner hereinafter provided, to-wit:

From natural gas sold for domestic purposes during the first year of the supply under these presents, sixty per centum.

From natural gas sold for domestic purposes during the second year of supply under these presents sixty-two and one-half per centum.

From natural gas sold for domestic purposes during the third year and each year thereafter under these presents sixty-six and two-thirds per centum.

From natural gas sold for manufacturing purposes at any time during the term of this agreement seventy-five per centum, unless such gas shall be sold at 13½ cents per thousand cubic feet net, or under, in which event the proportion of the proceeds collected therefor which shall be received by the Arkansas Company shall be eighty per centum.

And it is further provided always in this behalf that while the proportion due the said Arkansas Company is fixed and based upon the maximum rate provided by Ordinance No. 1539, as hereinbefore set forth, nevertheless, the said Pulaski Company shall not be by these presents prevented, hindered or restrained, for its own part and in its own behalf, from lowering or altering the said rate. In the event the Pulaski Company shall sell natural gas at rates lower than the maximum price fixed in said ordinance, then the proportion due said Arkansas Company shall be based on such lower rates; provided, however, said Arkansas Company if dissatisfied with the proportion it will receive on the basis of such lower rate, may thereupon terminate this agreement, after six months' notice in writing of its intention so to do, unless the Pulaski Company, before the expiration of the six months' notice, restores the division of proceeds collected based upon such maximum rate or such other rates as may be otherwise agreed upon.

"And, moreover, the said Pulaski Company shall be entitled to have and to retain at all times all sums collected from its 107 patrons and consumers, constituting the difference between the actual consumption of gas and the minimum bill of one dollar monthly service which may be charged by the said Pulaski Company under the provision of said Ordinance No. 1539."

7. It is agreed that paragraph numbered eighteen of the original agreement shall be and the same is hereby amended so as to be and read as follows:

"Eighteenth. That for the purpose of distribution of the proceeds realized from the sale of natural gas under these presents, the term 'Manufacturing purposes' shall be taken to mean and relate to such natural gas as is sold to consumers who consume 1,000,000 cubic feet or more of gas per month, unless the same be supplied to residences, rooms, offices, apartments, schools, churches or stores, it being intended that gas supplied to consumers who consume less than 1,000,000 cubic feet per month or to residences, rooms, offices, apartments, schools, churches or stores, (without reference to the amount consumed) shall be regarded as supplied for 'domestic purposes.' "

8. The original agreement except as modified by the provisions of this agreement shall in all respects remain in full force and effect.

ARKANSAS NATURAL GAS COMPANY,
(Signed) By J. C. TREES,
President.

Attest:

(Signed) H. S. GRAYSON,
Secretary.

PULASKI GAS LIGHT COMPANY,
(Signed) By HENRY M. DAWES,
President.

Attest:

(Signed) N. W. HURR,
Asst. Secretary.

Dated April 15th, 1910.

Contract Between the Arkansas Natural Gas Co. and the Hot Springs Gas. Co.

This agreement, made and entered into this 30th day of January, A. D. 1911, by and between the Arkansas Natural Gas Company, a corporation organized and existing under the laws of the State of Delaware, hereinafter called the "Arkansas Company," party of the first part, and the Hot Springs Gas Company, a corporation organized and existing under the laws of the State of Arkansas, herein-after called the "Hot Springs Company," party of the second part, Witnesseth:

Whereas, the Arkansas Company is incorporated for the purpose of producing and supplying natural gas to the public and owns leases on a large acreage of gas territory, situate in Caddo Parish, Louisiana, and the vicinity thereof, on which large natural gas (wells) have been drilled, and also owns gas rights in leases in the States of Louisiana, Texas and Arkansas, and the said Arkansas Company is lawfully authorized to do business in the State of Arkansas and is about to lay and construct a large main pipe line from the said Caddo Field to Little Rock, in the State of Arkansas, with branch lines extending from said pipe line to Hope, Arkadelphia, Hot Springs, Pine Bluff, and other places of distribution along said lines;

And Whereas, the Hot Springs Company is lawfully authorized to provide a supply of gas for the use of the public, within the City of Hot Springs, in the State of Arkansas, and now owns and is engaged in operating a gas plant, or works, by means of which it supplies artificial gas to the public within the said City of Hot Springs, and the said company is lawfully authorized to supply natural gas to the public within the said City of Hot Springs and contemplates making such changes in and additions to its plant, or works, as may

be necessary to convert the same into a plant suitable for the supply of natural gas to the public within the said City of Hot Springs and in the vicinity thereof;

And Whereas, the said Hot Springs Company desires to obtain a supply of natural gas for such purposes, and the Arkansas Company is willing to provide the same, on the terms and conditions hereinafter set out;

Now, Therefore, the parties hereto, in consideration of the premises, and One Dollar (\$1.00) unto each of them paid by the other, the receipt of which payment is hereby acknowledged, do hereby severally covenant and agree with each other, as follows, to-wit:

1. The Hot Springs Company agrees that it will make such changes in, and additions to its gas plant, or works, and distributing mains, and install such appliances and devices as may be necessary to convert the same into a plant suitable for the reception, supply and distribution of natural gas to the public within the City of Hot Springs and its environs; that such changes and additions shall be made, and that its regulating devices shall be so constructed that the delivery pressure of gas to all its consumers shall not exceed eight (8) ounces; and that all thereof shall be completed and ready for use on or before the first (1) day of April, 1911, or as soon thereafter as the Arkansas Company is ready to deliver natural gas to the Hot Springs Company, as hereinafter provided.

2. The Hot Springs Company agrees to extend its system of distribution and supply, from time to time, whenever and wherever (within its district of supply) responsible, regular consumers can be secured, on an average of one to each one hundred (100) feet of pipe line necessary to be laid to reach such consumers, and generally to conduct and develop the natural gas business within the limits of the said City of Hot Springs and its environs, as rapidly as a sufficient number of responsible consumers may be procured to justify the same.

3. The Arkansas Company agrees that it will lay, construct, complete, maintain and operate, for the supply of natural gas, a branch line of not less than ten (10) inches in diameter, which shall extend from its main pipe line, at or near Malvern, in the County of Hot Springs, and State of Arkansas, in a Northwesterly direction, on the

110 Northwesterly side of the Ouachita River (if such location for the line is satisfactory to its engineers), to a point to be mutually agreed upon, close to Valley Street, at or near the Southern boundary line of the City of Hot Springs, at which place the said branch line shall be connected with the high pressure pipe line system of the Hot Springs Company; and that such branch line shall be of sufficient capacity to transport and deliver not less than eight (8) million cubic feet of natural gas during each period of twenty-four (24) hours, at a natural pressure of twenty (20) pounds at its point of delivery to the Hot Springs Company, provided the Arkansas Company be not hindered by causes beyond its control in keeping the natural pressure, at point of delivery, up to twenty (20) pounds.

4. The Arkansas Company agrees that its main pipe line, together with its branch line extending to the City of Hot Springs, shall be completed and be fully equipped and ready for operation for the transportation and supply of natural gas to the Hot Springs Company not later than the first (1st) day of April, 1911, unless unavoidably delayed by strikes, accidents, inability to secure rights-of-way, laborers or materials, or by other causes beyond its control; provided, that if the said Arkansas Company does not have its lines completed and equipped ready for the supply of natural gas to the Hot Springs Company in pursuance hereof, on or before the first (1st) day of January, A. D. 1912, the Hot Springs Company shall have the right, at its option, at any time within sixty (60) days thereafter, to end and terminate this contract on giving written notice thereof to the Arkansas Company.

5. The said Arkansas Company agrees that it will constantly keep and maintain the said line and the branch line, with the equipment and appliances used in connection therewith, in as good repair and condition for the transportation and supply of natural gas to the Hot Springs Company as possible, and use the customary skill and diligence in operating its lines, during the term herein agreed upon; that, during the term hereof, it will furnish and supply to the Hot Springs Company, through said branch line, so much natural gas as it from time — required, provided such requirements do not 111 at any time exceed eight (8) million cubic feet of natural gas per day of twenty-four (24) hours, except at the option of the Arkansas Company, and that the same shall be supplied through a reducing station which shall be erected, maintained and operated by the Arkansas Company, at the end of its ten (10) inch branch line at the point of connection with the high pressure line of the Hot Springs Company at or near the Southern boundary line of the said City of Hot Springs, at the point hereinbefore mentioned, or through such other or additional line or lines, station or stations, as the said Arkansas Company may elect to have or employ at some point accessible to the Hot Springs Company, outside of and close to the limits of the said City of Hot Springs; and provided that the pressure shall not be required to exceed twenty (20) pounds per square inch as aforesaid at the point of connection between the high pressure line of the Hot Springs Company and the branch line of the Arkansas Company.

6. After the delivery of natural gas to the Hot Springs Company, as aforesaid, the Arkansas Company shall have no dominion or control over same, or be in any manner responsible for, or on account of anything which may be done, or which may happen or arise in relation to, or touching the natural gas so delivered, and the Hot Springs Company shall, at all times, and from time to time, keep, save harmless, and indemnify the Arkansas Company from any and all manner of claims, suits, expenses, costs and damages on account of any act or thing touching said natural gas, after the delivery thereof to the Hot Springs Company as aforesaid.

7. The Arkansas Company agrees, that, during the term of this contract, it will, from time to time, by drilling and developing its present gas territory, and by acquiring and drilling and developing additional territory reasonably tributary to its present plant, endeavor to the best of its ability, and so long as it may be reasonably profitable, to furnish and provide an adequate supply of natural gas to the Hot Springs Company, in sufficient volume to meet the requirements of its consumers; that is to say, in the quantity or quantities hereinbefore set forth. That such drilling and developing shall be done in the manner usually followed by gas companies in conducting the natural gas business; but this covenant is made with the full knowledge, by the Hot Springs Company, of the risk and hazard of drilling for and obtaining gas, and no liability is assumed by the Arkansas Company for failure to furnish an adequate supply of gas, after reasonable effort has been made to do so by the Arkansas Company, as above provided.

112 8. The Arkansas Company further agrees, that if at any time, during the term hereof, it does not have sufficient natural gas to enable it to fully perform its duties, with respect to the supply of natural gas to consumers in the various portions of the territory reached by it, will deliver unto the Hot Springs Company its reasonable share of all the natural gas supplied by the Arkansas Company, without in any way discriminating against the Hot Springs Company, as to the quantity of gas supplied.

9. It is understood, that the business of producing, transporting and supplying natural gas may be, from time to time, subject to interruptions by reason of accidents or causes beyond the control of the Arkansas Company, or at variance with its plan of operations, and which, after reasonable effort, it may fail to avoid; and, therefore, it is agreed that if at any time during the term of this contract, the Arkansas Company fails, by reason of accident or otherwise, to furnish and deliver an adequate supply of natural gas, as before mentioned, the Arkansas Company shall not be held liable in damages for such failure, provided the Arkansas Company shall have made every reasonable effort to produce and furnish such supply.

10. The Hot Springs Company agrees that during the term hereof, it will maintain and keep its pipe line and its entire system for supply and distribution of natural gas in good order and condition, and reasonably free from leaks and waste of every kind; that in case the Arkansas Company fails at any time to furnish a full and adequate supply, if it furnishes only a partial supply of natural gas during such time, the Hot Springs Company shall so regulate its business that manufacturing concerns, if any, using large quantities of gas, shall be shut off, to the end that, if possible an adequate supply shall be furnished for domestic purposes; provided that, at such times, all other manufacturing concerns using large quantities of gas obtained from the Arkansas Company, that might affect the supply of the Hot Springs Company, are also shut off.

11. The Hot Springs Company agrees, that during the term hereof, in conducting the business of supplying natural gas to the public, or to any of its customers, it will, as nearly as may be, conform with and adhere to the forms of contracts, practices and usages generally prevailing in the conduct of such business by natural gas companies; that, at all times, during the term hereof, there shall be furnished, maintained and used, in connection with its system of distribution, a sufficient number of meters of proper capacity and mechanism to measure and record, as accurately as may be, the amount of gas passing through the same; and that the Hot Springs Company will not, during the term hereof, supply or sell any natural gas, except through such meters, or otherwise than by meter measurement.

12. The Hot Springs Company agrees, that at the end of each calendar month of the term hereof, or as nearly the end of every such month as may be practicable, it will cause each meter connected with its system to be accurately read and a record to be kept of each and every reading thereof; that the meters used for measuring gas to consumers using two hundred and fifty thousand (250,000) cubic feet per month, or more, shall be read and recorded daily; and that on or about the first (1st) day of each calendar month of the term hereof, it will render to each of its consumers a bill for the natural gas supplied during the preceding month, respect being had to the meter reading of every such consumer. The Hot Springs Company agrees that it will endeavor in good faith, to collect all bills for natural gas supplied to its consumers, as aforesaid, and keep accurate books of accounts showing the cubic feet of gas supplied and the amount of collections made, and on or before the twentieth (20) day of each month, the Hot Springs Company will render to the Arkansas Company a statement showing the gross income during the preceding month, from sales of natural gas, and will pay over on such date, unto the Arkansas Company, such amounts as it may be entitled to receive for the supply of gas during the preceding month, on the basis hereinafter mentioned, and a failure on the part of the Hot Springs Company to make payment to the Arkansas Company for its proportion of the gross income as herein provided, for a period of sixty (60) days, shall work a suspension of this contract, and the Arkansas Company shall have the right to shut off the supply of gas until such payments are made in accordance with the terms hereof.

13. The Hot Springs Company agrees, that during the term hereof, in conducting the business of supplying natural gas to the public or any of its consumers, while nothing herein contained shall prevent, hinder or restrain the said Hot Springs Company from changing rates to its own consumers from time to time, nevertheless, as a minimum basis for monthly settlements between the Hot Springs Company and the Arkansas Company, for gas sold by the Hot Springs Company during the term hereof, the following schedule of net rates per thousand (1,000) cubic feet of gas, and quantity of gas sold to each consumer, shall be used to determine the proportion

and amount to be paid by the Hot Springs Company to the Arkansas Company, in accordance with the percentage specified, covering the gross income of gas sold each month by the Hot Springs Company; but it is provided always, nevertheless, that if during the term of this contract the Hot Springs Company should raise its rates for the service provided under the schedule of minimum rates hereinafter specified, then the Arkansas Company shall receive the same percentage of the gross receipts of such increased rates, as it is to receive under the following schedule, viz:

Domestic Gas.

(a) Of all gas sold under classification of Domestic Gas, for use in residence, rooms, churches, schools, stores, cafes, boarding houses, offices, apartments, hotels, and private hospitals, for the first five thousand (5,000) cubic feet per month to each consumer, the proportion to be paid the Arkansas Company shall be sixty-six and two-thirds (66 $\frac{2}{3}$ %) per centum of forty cents (40¢) net per thousand cubic feet.

(b) Of all gas sold under same classification as "a," in quantities of over five thousand (5,000) cubic feet, and up to one hundred thousand (100,000) cubic feet per month, to each consumer, the proportion to be paid the Arkansas Company shall be sixty-six and two-thirds (66 $\frac{2}{3}$ %) per centum of thirty cents (30¢) net per thousand cubic feet.

(c) Of all gas sold under same classification as "a" and "b," in quantities of one hundred thousand (100,000) cubic feet and less than five hundred thousand (500,000) cubic feet per month, to each customer, the proportion to be paid the Arkansas Company shall be sixty-six and two-thirds (66 $\frac{2}{3}$ %) per centum of twenty-five cents (25¢) net per thousand cubic feet.

(d) Of all gas sold under same classification as "a" "b" and "c," in quantities of five hundred thousand (500,000) cubic feet, and less than one million (1,000,000) cubic feet per month, to each consumer, the proportion to be paid the Arkansas Company shall be sixty-six and two-thirds (66 $\frac{2}{3}$ %) per centum of twenty cents (20¢) net per thousand cubic feet.

Industrial Gas.

(e) Of all gas sold for steam boilers, power making or similar uses, and sold in quantities of one million (1,000,000) cubic feet and less than five million (5,000,000) cubic feet per month, to each consumer, the proportion to be paid the Arkansas Company shall be seventy-five (75%) per centum of all such gas sold at rates ranging from twenty cents (20¢) net per thousand cubic feet to thirteen and one half cents (13 $\frac{1}{2}$ ¢) net per thousand cubic feet.

(f) Of all gas sold for steam boilers, power making or other manufacturing purposes, classified as Industrial business, sold in

quantities of five million (5,000,000) cubic feet per month, or more, to each consumer, the proportion to be paid the Arkansas Company shall be eighty (80%) per centum of all gas sold at rates ranging from and including thirteen and one-half ($13\frac{1}{2}\text{¢}$) net to twelve and one half cents ($12\frac{1}{2}\text{¢}$) net per thousand cubic feet.

Any residence, room, office, apartment, school, church, store, cafe, restaurant, boarding house, private hospital or hotel,
116 using more or less than one million (1,000,000) cubic feet
of gas per month shall be regarded as supplied for domestic purposes, provided that no hospital or hotel equipped with steam boilers for power purposes shall be classed as gas supplied for domestic business.

14. The schedule of rates herein fixed as a basis upon which the Arkansas Company is to receive its percentage of the gross receipts, shall be in force for the full term of this contract; and it is provided, always, in this behalf, that while the proportion due the said Arkansas Company is fixed and based upon the schedule of rates herein-before set forth, nevertheless the said Hot Springs Company shall not be by these presents prevented, hindered, or restrained for its own part and in its own behalf from lowering or altering the said rates, but in the event the Hot Springs Company shall sell natural gas at rates lower than those fixed in the said schedule; then the proportion due the said Arkansas Company shall be based on such lower rates, and it is further provided, however, that the said Arkansas Company, if dissatisfied with the proportion it will receive on the basis of such lower rates, may thereupon terminate this agreement after six months' notice, in writing, of its intention so to do, unless the said Hot Springs Company, before the expiration of the six months' notice, restores the division of proceeds collected, based upon the rates named in said schedule, or such other notice as may be otherwise agreed upon.

15. In determining the income received by the Hot Springs Company, from the sale of natural gas, such amounts, if any, as are received by it as minimum charges of service, and which are in excess of the amount of natural gas delivered at the rate payable therefor, shall not be regarded as part of the income received from the sale or supply of natural gas; and shall not be taken into consideration in determining the amount payable by the Hot Springs Company to the Arkansas Company for furnishing a supply of natural gas; and the Hot Springs Company shall not be required to pay for any gas sold, unless it received payment therefor, except as hereinafter specified.

117 16. It is agreed, that if any consumer supplied by the Hot Springs Company, under the provisions of this agreement, becomes delinquent, the Arkansas Company may serve thirty (30) days' notice upon the Hot Springs Company to discontinue service to such consumer, and if the service is continued after said thirty (30) days — while such consumer is delinquent, the Hot Springs Company shall be responsible hereunder in like manner as if

it had collected the amount due from such consumer for gas supplied after receiving the said thirty (30) days' notice.

17. The Hot Springs Company agrees that the Arkansas Company, or its duly authorized representatives, may at all reasonable times be permitted to have access to the records and books of account of the Hot Springs Company (as far as they relate to the sale of natural gas), for the purpose of ascertaining its income from the sale of natural gas, and verifying such statements as the Hot Springs Company renders from time to time, in relation thereto; and also for the purpose of obtaining any other information it may require relating to the sale, delivery or metering of natural gas to any of its customers. Such audit may be made monthly at the option of the Arkansas Company.

18. The terms of this contract shall be for the period of twenty (20) years, from and after the first (1st) day of April, 1911, unless the same is sooner terminated, as hereinafter provided. If the Arkansas Company fails, temporarily, at any time during the term hereof, to provide a sufficient supply of natural gas to meet the requirements of the Hot Springs Company, the Hot Springs Company shall be at liberty, during such failure, to obtain a supply of natural gas from any other source or sources, to the end that it may serve its customers and preserve its business; or the Hot Springs Company, during any such failure in providing a supply, shall be at liberty to introduce and provide manufactured gas through its plant, or works, without being accountable or responsible to the Arkansas Company, as to compensation, or otherwise, during the period of its failure to provide a supply of natural gas in accordance with the requirements hereof, unless natural gas be supplied by the Arkansas Company and mixed with the manufactured gas, in which event such natural gas

shall be properly measured and paid for as if such failure had not taken place. Notice, however, of the desire of the Hot

118 Springs Company to provide for its needs under such conditions shall at once be given to the Arkansas Company, but the delivery of gas under this contract, after any short or temporary failure, shall be resumed within five (5) days after notice is given to the Hot Springs Company that the Arkansas Company is ready to again provide a supply of gas as herein provided and reimburse the Hot Springs Company for all expenses incurred in a temporary supply.

19. If the Arkansas Company, at any time during the term hereof, fails for a period of thirty (30) consecutive days, to provide an adequate supply of natural gas, as herein agreed, the Hot Springs Company, may, at its option, provide for the deficiency; or it may, at its option, given sixty (60) days' written notice to the Arkansas Company of the intention of the Hot Springs Company to end and terminate this agreement; and at the end of the said sixty (60) day period, the Hot Springs Company may at its option, declare this contract ended and terminated, and no longer operative between the parties hereto, unless, prior to the expiration of the said sixty (60) day period, the Arkansas Company shall have resumed and again

provided an adequate supply of natural gas for the use of the Hot Springs Company, in accordance with the requirements hereof.

20. If at any time during the term hereof, its supply of natural gas becomes entirely exhausted, or if for any other reason the Arkansas Company becomes permanently unable to comply with the requirements of this contract, the Hot Springs Company may, on thirty (30) days' written notice to the Arkansas Company, end and terminate this contract, so that the same shall be no longer operative, without either party hereto being liable in damages to the other party hereof, on that account.

21. It is agreed between the parties hereto, that the requirements for the working pressure to consumers of the Hot Springs Company shall not be allowed to exceed eight (8) ounces, and the natural delivery pressure of the Arkansas Company to be twenty (20) pounds at high pressure connection of Hot Springs Company, shall be subject to reasonable variation and change, both parties however, agreeing to maintain and conform to those requirements as closely as possible at all times.

19 22. The Arkansas Company shall have the right, by its duly authorized agents and employees, at all reasonable times, to enter upon, examine, inspect and test the pipe lines, plant and system of the said Hot Springs Company, including among other things, its meters, stations, pipe lines, connections and services; should such inspection by the Arkansas Company develop leakage in the lines, connections or meters of the Hot Springs Company, improper registering or meter capacities, notice thereof shall be given the Hot Springs Company relative to same, and repairs or changing of meters shall be made at once, and the failure on the part of the Hot Springs Company to make proper repairs of its pipe line system or meters, then the Arkansas Company may make such repairs or changing of meters as may be necessary, or cause the same to be made, at the expense of the Hot Springs Company. And likewise the said Hot Springs Company shall have the right, by its duly authorized agents or employees, at all reasonable times, to enter upon, examine, inspect, and test the pipe line, plant and system of the said Arkansas Company, including among other things its meters, stations, lines, connections, well- and service, except that this privilege does not apply to plants or systems of pipe lines being supplied by the Arkansas Company, but not owned by them.

23. During the first year, after the introduction of natural gas into the City of Hot Springs, in pursuance hereof, the Hot Springs Company shall be entitled to have natural gas in reasonable quantities, free of charge for the purpose of demonstration and its own advertisement; such gas, however, to be metered and not to be used in open stand pipes or flambeau lights, and the extent of such free use of gas for such purposes shall be subject to the approval of the Arkansas Company.

24. It is also agreed, that if at any time during the term of these presents the Arkansas Company, for any reason other than the default of the Hot Springs Company, supplies within the said City of Hot Springs and its immediate environs hereinbefore specified, other consumers than those of the Hot Springs Company, such consumers shall be deemed and taken to be the consumers of the Hot Springs Company, and the Hot Springs Company shall be entitled to 120 have and receive its proportionate part of the income derived therefrom, to the same extent as if such gas was sold by the Hot Springs Company, and monthly settlements shall be made accordingly.

25. The Hot Springs Company agrees, that during the continuance of the terms hereof, it will purchase, in accordance with the provisions hereof, from the Arkansas Company, all the natural gas which the Hot Springs Company requires for the supply of the public within the City of Hot Springs and within a radius of five miles thereof, provided that the Arkansas Company furnishes the same as herein agreed.

26. It is agreed that the Hot Springs Company may, during the terms of this contract, and notwithstanding the other provisions hereof, make a special rate of twelve and one half cents ($12\frac{1}{2}$ c.) per thousand cubic feet, for the supply of natural gas to the City of Hot Springs for its use in the City Buildings and in the Fire Department Houses, and unless the said City pays its bills in cash, the Hot Springs Company may accept in payment thereof city scrip or other obligations of the City. If city scrip or other obligations are received, the Hot Springs Company may hold and convert the same into money or realize thereon, at such times and in such manner as it may deem judicious, and thereupon the proceeds shall become and be treated as part of the income of the Hot Springs Company, provided, however, that the Arkansas Company shall have the right at any time to require the Hot Springs Company to turn over to the Arkansas Company such portion of the City scrip or other obligations so received as will at par equal the amount of money the Arkansas Company would be entitled to receive had the said city paid its bills in cash.

27. Each of the parties hereto represents that it has taken lawful corporate action authorizing the execution of this instrument in duplicate, either of which may be taken as the original.

It is also agreed that this instrument shall be binding upon the parties hereto, and be binding upon and inure to their respective successors and assigns.

121 In Witness Whereof each of the said parties hereto has caused its name to be hereto subscribed, and its corporate seal to be affixed and attested by its proper corporate officers.

ARKANSAS NATURAL GAS COMPANY,

By _____,
President.

Attest:

_____,
Secretary.

By HOT SPRINGS GAS COMPANY,
By _____,
President.

Attest:

_____,
Secretary.

EXHIBIT H.

122 This agreement made and entered into the twel-th day of September, A. D. 1914, by and between the Arkansas Natural Gas Company, a corporation created and organized under the laws of the State of Delaware. The Texas Company, a corporation created and organized under the laws of the State of Texas, and the Southwestern Gas and Electric Company, a corporation created and organized under the laws of the State of Delaware, parties of the first part, and M. L. Benedum, J. C. Trees, and Booth and Flinn, limited, all of Pittsburgh, Pennsylvania, E. S. Lufkin, of New York City, New York, M. W. Bahan, of Fort Worth, Texas, and Rufus C. Dawes of Chicago, Illinois, parties of the second part, witnesseth:

Whereas, the said parties of the first part represent that they severally have and hold large acreages of lands in the Parishes of Caddo and De Soto in the State of Louisiana, for the production of natural gas and desire to dispose of their several and respective productions of natural gas therefrom, present and future, in a way and manner that will best promote the interests of all persons and parties concerned; and

Whereas, the said parties of the second part have projected a main natural gas pipe line to commence at a point near Oil City in the state of Louisiana, at the De Soto compressing plant of the De Soto company, about a mile and a half north of the Lake of Mooringsport, and running thence in a southeasterly direction crossing Ferry Lake at the narrowest point near Mooringsport, thence parallel with the route of the Kansas City Southern Railroad between Blanchard and Soda Lake to the western boundary line of the City of Shreveport, and thence still paralleling the route of the said Kansas City Southern Railroad to Wallace Lake; thence crossing the route of the said Kansas City Southern Railroad near that point and thence in a southerly course to a point at or near Naborton, Parish of De Soto, state of Louisiana, and the said main line will be about fifty-four miles in length and consist approximately of forty-four miles of

123 16 $\frac{1}{4}$ " thick 42 pound plain end wrought steel pipe, extending from the end of the said route, located as aforesaid at or near Oil City, and approximately of ten miles of 16 5-16" thick plain end wrought steel pipe the rest of the distance, the whole to be put together with wrought steel rubber joint couplings of approved design, and the line to be provided with all the necessary drips gate-valves, fittings, regulators, stations and all things required to render it a complete and modern natural gas pipe line, plant or system adequate for the purposes of its construction, and there will be obtained the necessary rights of way for the said main line; and

Whereas, the said parties of the second part have caused to be created and organized under the laws of the State of Delaware, that certain corporation known as the Reserve Natural Gas Company of Louisiana for the purpose of carrying forward and accomplishing the said project and have underwritten a major part constituting the entire subscription to the date hereof of the stock of the said corporation.

Now therefore it is for and in consideration of the promises and the covenants, agreements, stipulations and conditions of these presents on their respective parts to be done, paid, kept, observed or performed, that the said parties thereto have covenanted, promised and agreed, and by these presents do covenant, promise and agree, to and with each other and each for their respective parts in the manner following, that is to say:

First. That the said parties of the second part shall cause the work of constructing the said main line and providing things therefor of the character, dimensions and quantities hereinafter set forth to be commenced forthwith and prosecuted without any useless or avoidable delay to full competition and there result a complete and modern natural gas pipe line, plant or system adequate for the purposes of its construction as hereinbefore set forth, as well as the purposes of these presents. And in addition to the things above provided for and as part of the said plant or system there shall be provided, connected, maintained and operated along the route of its main
124 pipe line a telephone line in such form and manner as will permit what is known as a tour station to be maintained and each department of the plant or system be in touch with the other.

Second. That the said parties of the second part shall assign, transfer, set over and convey, but for a lawful, adequate and valuable consideration as they may elect and agree, unto the said Reserve Natural Gas Company, each and every right acquired by them under these presents the said Reserve Natural Gas Company shall undertake and be liable for and on account of all and singular the covenants, agreements, stipulations and conditions of these presents yet remaining to be done, paid, kept, observed or performed by the said parties of the second part thereto; and the said parties of the second part shall thereupon be released therefrom.

Third. That the said parties of the first part, in the event the said pipe line be completed in the location and in the way and manner hereinbefore set forth, shall have the right to sell and deliver each

day of twenty-four hours and will do so in preference to selling and delivering to other persons or parties, save as hereinafter set forth, from their holdings in the said Parishes of De Soto and Caddo, or these conveniently tributary to the said line, unto the said Reserve Natural Gas Company during the months of April, May, June, July, August and September of each year an aggregate daily amount of twelve million cubic feet of natural gas, whereof the said Arkansas Natural Gas Company may furnish twenty-six and two-third percentum or 3,200,000 cubic feet, the said The Texas Company may furnish sixty percentum or 7,200,000 cubic feet, and the said Southwestern Gas and Electric Company may furnish thirteen and one-third percentum, or 1,600,000 cubic feet, and during the months of October, November December, January, February and March of each year an aggregate daily amount of twenty-four million cubic feet of natural gas, of which the said Arkansas Natural Gas Company may furnish twenty-six and two-thirds percentum, or 6,400,000 cubic feet, the said The Texas Company may furnish sixty percentum or 14,400,000 cubic feet, and the said Southwestern Gas and Electric Company may furnish thirteen and one-third percentum, or 3,200-
125 000 cubic feet, but it is provided always nevertheless in this

behalf that in the event that said Reserve Natural Gas Company shall require at any time more than either of the said daily aggregate amounts, such excess may be supplied by the said parties of the first part in like proportions as the delivery of the said aggregate amounts, unless any one or more of the said parties of the first part may be unable to supply its or their proportion, whereupon the other party or parties of the said parties of the first part may supply such deficiency in proportion to their respective proportions, and it is further provided always nevertheless in this behalf that if, during any month, the amount of natural gas supplied by any one or more of the said parties of the first part shall average for that month less than the amount required from it under these presents, that such party or parties shall have the right to make up such deficiency during the next succeeding month, but not afterwards, unless there be a vacaney in the capacity of the main line during the period that will not interfere with its or their requirements otherwise; and that all deliveries under these presents shall be against the varying pressures of the main line of the said Reserve Natural Gas Company, but always such as will deliver the said natural gas at a pressure of at least one hundred pounds at the compressing station of the said Arkansas Natural Gas Company at or near the town of Lewis, in the State of Louisiana, unless it may be impossible by natural rock pressure of gas wells supplying gas to Reserve line to maintain one hundred pounds pressure, in which event the gas may be delivered so as to enter the said main line at a pressure as low as fifty pounds at the said compressing station at Lewis, but nothing herein contained shall require the use of a compressing station or other mechanical appliance or means to increase or maintain pressure. The obligations to sell and deliver natural gas imposed on parties of the first part by this paragraph shall be deemed several and not joint.

Fourth. That the said Reserve Natural Gas Company shall, in the event the said pipe line be completed in the location and in the way and manner hereinbefore set forth, sell and deliver each day of twenty-four hours during the months of April, May, June, July,

August and September of each year unto the said parties of 126 the first part, and the said parties of the first part will take and pay for, or cause to be taken and paid for, an aggregate amount of twelve million cubic feet of natural gas each twenty-four hours, whereof the said Arkansas Natural Gas Company will take and pay for, or cause to be taken and paid for, sixty-one per centum or 7,320,000 cubic feet, the said The Texas Company, will take and pay for, or cause to be taken and paid for, eleven per centum, or 1,320,000 cubic feet, and the said Southwestern Gas and Electric Company will take and pay for, or cause to be taken and paid for, twenty-eight percentum or 3,360,000 cubic feet, and during the months of October, November, December, January, February and March of each year the said Reserve Natural Gas Company shall sell and deliver unto the said parties of the first part each day of twenty-four hours, and the said parties of the first part will take and pay for, or cause to be taken and paid for, an aggregate amount of twenty-four million cubic feet of natural gas each twenty-four hours, whereof the said Arkansas Natural Gas Company will take and pay for, or cause to be taken and paid for, sixty-one percentum or 14,640,000 cubic feet, the said The Texas Company will take and pay for, or cause to be taken and paid for, eleven percentum or 2,640,000 cubic feet, and the said Southwestern Gas and Electric Company will take and pay for, or cause to be taken and paid for, twenty-eight percentum or 6,720,000 cubic feet, that in the event the said Reserve Natural Gas Company for any reason fails to be able at any time to deliver the aggregate daily amount of natural gas required of it under these presents, such amount as it may be able to deliver shall be apportioned in the same way as if the whole amount had been delivered. The obligations to take and pay for natural gas, or to cause the same to be taken and paid for, as imposed on parties of the first part by this paragraph shall be deemed several and not joint.

Fifth. That in the event the said pipe line be laid, in the location and in the way and manner hereinbefore set forth, the said Reserve Natural Gas Company shall furnish, lay, maintain and operate all gathering lines necessary for the collection and transportation of the natural gas required to be taken by it under these presents;

127 that all natural gas received by the said Reserve Natural Gas Company under these presents shall be through and by means of meters and regulators or other measuring devices of proper size and mechanism to take and accurately measure and record the quantity thereof; that all meters and regulators or other measuring devices required for the purpose of receiving the said natural gas by the said Reserve Natural Gas Company shall be furnished, set up, connected, operated and maintained by it at its own proper charge, costs and expenses, and likewise all natural gas delivered by the said Reserve Natural Gas Company under these presents shall be through and by means of meters and regulators or other measuring devices of proper

size and mechanism to take and accurately measure and record the quantity thereof and shall be furnished, set up, connected, maintained and operated at the point of cost, charge and expense of the said Reserve Natural Gas Company, and the said parties of the first part, that is to say, all meters and regulators or other measuring devices required for the delivery of natural gas to the said Arkansas Natural Gas Company shall be furnished, set up, connected, maintained, and operated at the equal joint cost, charge and expense of the said Reserve Natural Gas Company and the said Arkansas Natural Gas Company, that all meters and regulators or other measuring devices required for the delivery of natural gas to the said The Texas Company shall be furnished, set up, connected, maintained and operated at the equal joint cost, charge and expense of the said Reserve Natural Gas Company and the said Texas Company, and all meters and regulators or other measuring devices required for the delivery of natural gas to the said Southwestern Gas and Electric Company shall be furnished, set up, connected, maintained and operated at the equal joint cost, charge and expense of the said Reserve Natural Gas Company and the said Southwestern Gas and Electric Company, but nevertheless all of the said meters and regulators or other measuring devices, no matter what natural gas may be received or delivered through them, shall be and remain under the sole and exclusive control of the said Reserve Natural Gas Company; that all natural gas received and delivered under these presents shall be computed at

14.70 atmosphere; that the said parties of the first part or
128 any of them shall have the right at all reasonable times to
examine and test any of the meters, regulators or other
measuring devices required for the reception or delivery of natural
gas under these presents, and whenever any meter, regulator or other
measuring device may be found faulty to an important degree,
whether the discovery be made by the said parties of the first part, or
the said Reserve Natural Gas Company, or otherwise howsoever, the
same shall be forthwith removed, repaired or replaced; that these
presents are made and accepted with full knowledge of and subject
to the many causes that in the business of operating for and the
production transportation, sale, delivery or reception of natural gas
may not reasonably be anticipated and provided against and may
prevent, hinder or restrain, in whole or in part, the production, trans-
portation, sale, delivery or reception of natural gas, and no claim
shall be made, permitted or recovered on account thereof; that if,
among the causes that may prevent, hinder or restrain in whole or
in part, the production, transportation, sale, delivery or reception of
the natural gas required under these presents, any of the meters,
regulators, or other measuring devices used for measuring the said
gas get out of proper working order or have to be temporarily re-
moved to make repairs, each of the said parties of the first part shall
have the right as to such appliances as may be used to receive or de-
liver the natural gas respectively due from or to them under these
presents to temporarily remove the measuring devices, that is to say,
for a period not to exceed ten days, and the natural gas that may
have passed through such meter or defective appliances shall be
estimated for the time they may have been defective upon the basis

of the amount of gas registered by the meter or other appliances after the same have been repaired, or by the meter or other appliances by which the defective ones may have been replaced for a period of time and under similar pressure as nearly as practicable; and it is further provided in this behalf that if the delivery of natural gas show a serious variation either of the said parties to these presents may request that whatsoever meter or measuring device may be suspected of being inaccurate shall be tested and the expense of making such test shall be paid by the said parties share and share alike;

and that should the meter or other appliances be found to be
129 incorrect to the extent of three per cent, or over, an adjustment

of the amount of gas delivered shall be made in the way and manner hereinbefore set forth, and the period of time upon which all estimates for defective meter or other appliances may be made shall not in each instance exceed forty-five days.

Sixth. That readings or records from the said meters or measuring devices through which the said natural gas received and delivered shall have passed shall be taken daily by the said Reserve Natural Gas Company and kept in its main office at present located at Shreveport, Louisiana; that the said Company shall render unto the said parties of the first part, on or before the 10th day of each and every calendar month, a statement taken and made up from the readings and records of the then previous month as based and computed upon 14.70 atmospheric pressure; that the said Reserve Natural Gas Company shall well and truly pay on or before the twentieth day of each and every calendar month during the term of these presents unto the said parties of the first part respectively, the sum of two cents for each and every thousand cubic feet of natural gas which may have been received by it from them respectively during the then previous calendar month, and the said parties of the first part shall respectively well and truly pay or cause to be paid unto the said Reserve Natural Gas Company at the same time the sum of four and one-half cents for each and every thousand cubic feet of natural gas that may have been received by them respectively from it during the then previous month.

Seventh. That should the said Reserve Natural Gas Company at any time or times require more natural gas than the said parties of the first part may be able to provide, it shall have the right to purchase from others and take into its said main pipe line such excess quantity or quantities, but it is provided always in this behalf that the said parties of the first part shall each be entitled to have, if they so elect, the same proportionate part of all excess quantities of natural gas obtained by the said Reserve Natural Gas Company, whether the same be obtained from the said parties of the first part or from others as they are respectively entitled to have in the daily and minimum quantity hereinbefore set forth.

130 Eighth. That these presents are made with full knowledge and notice of and subject to all, and all manner of contracts existing prior to the date hereof touching the production, purchase,

sale, and delivery of natural gas by the said parties of the first part, and nothing herein contained shall prevent any of the said parties from making reasonable extension of their respective plants for the supply of districts already being supplied by them and to which the said lands in the Parishes of Caddo and De Soto may be tributary; and it is further provided always with reference to the natural gas to be respectively supplied the said parties of the first part that each shall put forth its best endeavors in every way to maintain the production and delivery of its respective proportion.

Ninth. That the term of these presents shall be the twenty years next ensuing the date thereof and that all and singular the covenants, agreements, stipulations, and conditions of these presents on the part of the parties thereto to be done, paid, kept, observed or performed shall extend to, include and mean their respective heirs, executors, administrators, successors and assigns.

In witness whereof the said parties personal have hereunto set their respective hands and seals and the said parties corporate have caused their names by the hands of their respective presidents and their respective common and corporate seals to be hereunto affixed the day and year first above written.

Signed, sealed and delivered in the presence of

J. C. TREES.	[SEAL.]
M. L. BENEDUM.	[SEAL.]
E. C. LUFKIN.	[SEAL.]
RUFUS C. DAWES.	[SEAL.]
M. W. BAHAN.	[SEAL.]

Attest:

W. J. DIEHT, *Secretary.*

ARKANSAS NATURAL GAS COMPANY,

By J. C. TREES, *Pres.*

Attest:

131 W. M. BRUCE, *Asst. Secretary.*

THE TEXAS COMPANY,

By E. C. LUFKIN, *Pres.*

SOUTHWESTERN GAS & ELECTRIC CO.,

By RUFUS DAWES,
Pres.

Attest:

W. W. H.,

Asst. Secretary.

BOOTH & FLINN, LIMITED,

By GEO. H. FLINN, *Secy.*

GEO. H. FLINN,

W. J. WISEMAN, *Managers.*

132

EXHIBIT I.

It is hereby agreed by and between the Arkansas Natural Gas Company, the Texas Company, the Southwestern Gas and Electric Company, and the Reserve Natural Gas Company, parties to that certain Agreement bearing date the 12th day of September, A. D., 1914, for the purchase and sale of natural gas, the said Reserve Company having succeeded to the rights and assumed the then remaining liabilities of M. L. Benedum, J. C. Trees, Booth and Flinn, Limited, E. C. Lufkin, M. W. Bahan and Rufus C. Dawes under the said Agreement, that the following modifications of the said Agreement shall be made, exist and be in force for the two years next ensuing the first day of June A. D. 1918, to-wit:

1. The price which the Reserve Natural Gas Company of Louisiana, is to pay for the gas received by it shall be the sum of three (3c) cents per thousand cubic feet and the price which it is to receive for gas which it sells to the said purchasers, being the other parties to said contract, is to be the sum and price of six and one half (6½c) cents per thousand cubic feet.

2. In case any buyer fails to take in any one month the minimum amount it has contracted to take provided the Reserve Natural Gas Company of Louisiana is ready and able to make delivery thereof, then and in such case such buyer shall pay at the rate of three and one-half (3½) cents per thousand cubic feet for each thousand cubic feet of the difference between the total number of cubic feet which it is required by contract to take and the amount that it did actually take; provided, however, that any time prior to actual payment of the amount charged for gas contracted for and not taken, the party required to pay for such gas may arrange with any of the other buyers who have taken in excess of their requirements that all or any part of such excess may be regarded as having been taken by the buyer who is short.

133 3. Settlement is to be made on the basis of 8-oz. pressure above atmosphere instead of as provided by said contract.

In witness whereof, the said parties to these presents have caused their respective names and their respective common and corporate seals to be hereunto affixed by their respective officers thereunto lawfully authorized this — day of —, A. D. 1918.

ARKANSAS NATURAL GAS COMPANY,
By — — ,
President.

Attest:

THE TEXAS COMPANY,
By — — ,
President.

Attest:

_____.
_____.

SOUTHWESTERN GAS & ELEC-
TRIC COMPANY,

By _____,
President.

Attest:

_____.
_____.

RESERVE NATURAL GAS COM-
PANY OF LA.,

By _____,
President.

Attest:

_____.
_____.

(Here follows "Exhibit J," Map, marked page 133a.)

134 Filed Mar. 2, 1922. Sid B. Redding, Clerk, by
_____, D. C.

In the United States District Court, Western Division, Eastern
District, of Arkansas.

#2062.

ARKANSAS NATURAL GAS COMPANY, Plaintiff,
vs.

ARKANSAS RAILROAD COMMISSION et al., Defendants.

*Response of Arkansas Railroad Commission to Application for
Temporary Injunction.*

135 In the United States District Court, Western Division, Eastern
District, of Arkansas.

ARKANSAS NATURAL GAS COMPANY, Plaintiff,
vs.

ARKANSAS RAILROAD COMMISSION et al., Defendants.

*Response of Arkansas Railroad Commission to Application for Tem-
porary Injunction.*

(For convenience of reference, the paragraphs of this response are
numbered the same as the paragraphs in complainant's complaint.)

(2) Defendant denied that plaintiff purchased the gas rights
described in this numbered paragraph of the complaint, in Caddo
Parish, Louisiana, or the eastern part of Texas, paying therefor
\$5,500,000.00 of its capital stock as alleged in the complaint, but
says the truth is, in the year 1907, certain individuals named M. L.
Benedum, J. C. Trees and L. L. Thomas, and two or three of their
associates, acquired in Caddo Parish, Louisiana, oil and gas leases on
3,444 acres of land on which there had been some oil and gas de-
velopments, and paid therefore a comparatively small amount, and
in that year formed a corporation known as the J. C. Trees Oil Com-
pany, and in the year 1908 the J. C. Trees Oil Company acquired
350 acres more of gas and oil leases in Caddo Parish, La., and
drilled some wells for oil, but discovered gas. There was no market
for gas in that vicinity, so the gas wells on said acreage were capped
and no gas used therefrom. In the year 1909, the said individuals
who composed the J. C. Trees Oil Company tried to find a market
for said gas and planned to pipe it to points in Arkansas, and as a
part of this plan organized complainant corporation, the Arkansas

136 Natural Gas Company, to construct a pipe line to points in
Arkansas and find a market for the gas on said lands, and gas
that could be obtained in that vicinity. On the organization

of the Arkansas Natural Gas Company, the stockholders in which were substantially the same as the stockholders in the J. C. Trees Oil Company, the two companies entered into a contract whereby the gas rights in said acreage were transferred to the Gas Company for the consideration of \$1.00 and other valuable considerations. The other valuable considerations consisted of the agreement between the two companies that the Gas Company should pay all rentals and otherwise comply with the terms of the leases on said acreage then owned by the Oil Company, and further that if in its drilling operations on said lands the Gas Company brought in an oil well, the oil well should belong to the Oil Company on its payment to the Gas Company of the bare cost of drilling. Said agreement also provided that if the Oil Company should bring in a gas well, the Gas Company should take it over and have the gas on payment to the Oil Company of its cost of drilling.

Said oil and gas leases contained the usual provisions that rentals should be paid and development of the lands diligently prosecuted, and the land owners to be paid a certain price for the gas produced on their lands and a certain per cent of the oil produced. All of these obligations as between the lessee and land owners, originally incurred by the Oil Company were under the arrangement herein-before described assumed by the Gas Company. If there was any money value as between the two companies in that transaction, it was in favor of the Oil Company and the Gas Company obtained no rights that would add to its capital assets or justify the issuance of any stock; and defendant denies that any stock in the Arkansas Natural Gas Company was issued to pay for said rights. Plaintiff operated under said arrangement, drilled wells on parts of said lands,

paid rentals on other parts, and otherwise maintained said
137 leases without expense to the Oil Company, although the Oil

Company realized the benefit of all oil found on said lands, and finally in the year 19—, sold its said oil interests in said lands to the Standard Oil Company for \$4,000,000.00, the said sale leaving the agreement with the Gas Company in full force. Defendant is not informed as to the investigation made by plaintiff in regard to the possibilities of the said gas field, or that the gas supply in the field was supposed to be practically inexhaustible, or that it would justify the building of a pipe line to take it to markets.

(3) Defendant is not informed what expectation the plaintiff had in regard to factory and industrial development in the vicinity of Little Rock, and says that the factory and industrial development at Little Rock since natural gas has been brought here has been normal and what should reasonably have been expected.

Defendant denies that the field known as the Caddo gas field has been exhausted, or that the gas fields tributary to the pipe line of plaintiff has been exhausted. It states on information and belief that plaintiff has continued to operate under its contract with the Little Rock Gas and Fuel Company without objection for a considerable time since it has been obtaining gas from the places and from the Reserve Gas Company as it now obtains its gas.

(5) Defendant denies that plaintiff has acquired any gas leases in Arkansas at all except in its acquisition of oil and gas leases in Arkansas and other states which have been entirely acquired for the value of the oil that might be found thereon.

Defendant denies that plaintiff attempted to drill and develop the territory tributary to its pipe line system extending from Lewis to

Hot Springs, other than its drilling operations in Louisiana,
138 and denies that its Texas acreage was thoroughly drilled by it up until 1915.

(6) Defendant denies that the cost of constructing plaintiff's entire gas system was \$6,000,155.00 in 1912, but says the fact is complainant's books show that the entire amount expended on its plant since the beginning up to September 30, 1920, including its materials on hand, was \$5,881,496.31, and defendant denies that between December 31st, 1912, and December 31st, 1921, there was added to plant investment by way of improvements and additions, the sum of \$971,544.06; and denies that the total investment on December 31st, 1921, was \$7,126,614.22, but says the fact is, as shown by the books of plaintiff, the entire plant investment September 31st, 1920, was the said sum of \$5,881,486.71, and that said books show a depreciation of said assets of \$1,832,064.44, showing the depreciated value of plaintiff's plant, as shown by its own books on September 30th, 1920, of \$4,049,432.27. This valuation included all fittings, materials on hand, office fixtures and everything else which constituted the capital expenditures for plaintiff's plant.

Defendant denies that the present fair value of plaintiff's property used and useful in rendering public service is not less than the sum of \$—, but says that the said value will not exceed \$4,000,000.00, and that in the rate fixing hearing before the Railroad Commission, plaintiff has claimed this value was \$6,000,000.00, and in arriving at the said valuation of \$6,000,000.00 plaintiff capitalized its lease holdings of leases which it claimed were gas lenses at \$1,500,000.00.

Defendant denies that the gas wells, gas acreage and gas leases acquired by plaintiff in October, 1909, which were the gas rights acquired under the agreement with the J. C. Trees Oil Company

were well worth \$5,500,000.00 in money, but says the fact is
139 they were worth nothing in money, and if any capital stock was issued for them, it was stock issued without consideration, and if the plaintiff expected to earn dividends on said watered stock its expectations were improper and unjustified.

(7) Defendant says that the Lewis and De Soto Compressing Stations were erected by the complainant and the cost of same was duly charged in the capital expenditures, as shown by the books of plaintiff, and included in the capital expenditures in constructing the plant of plaintiff as hereinbefore described in this response.

(8) Defendant says that the occasion for the organization of the Reserve Company to lay pipe lines to De Soto Parish to pipe gas to the distributing points for the Texas Company and the South-

western Gas Company was the obvious economy of having only one pipe line for its considerable length, instead of three which would have been necessary if the plaintiff, the Texas Company and the Southwestern Gas Company each had laid one; and that the stockholders in these respective companies organized the Reserve Company and constructed the pipe line for the transportation of gas and delivery to each of the three companies. The earnings of the Reserve Company have been very large, which have inured to the benefit of the stockholders, who were the stockholders in the three companies who sold gas to the Reserve Company and purchased gas from it under the terms of the contract that is exhibit 8 to the complaint.

Defendant denies that plaintiff may not obtain gas from other gas fields reasonably near the line of the Reserve Company to make it attractive to the Reserve Company to extend its lines to those gas fields, if the present source of supply should be seriously depleted.

(10) Defendant denies that plaintiff has earned but little more than the amount necessary to pay interest on its bonded and floating indebtedness in the years 1911, 1912 and 1913, but says that the proceeds of the bond issue represented by the capital that it invested in its gas properties was as hereinbefore stated, and that the cost of replacements in its plant and the cost of all acreage for oil and gas rights that it has extensively acquired, principally for their value for oil, have been charged to the operating expenses of the gas business; and that since the organization of the Reserve Company in the year 1915, plaintiff has expended no money for pipe lines and gas fields, and has constructed no such pipe lines; but all such extensions have been made by the Reserve Company at its own cost, and the Reserve Company by various arrangements with plaintiff has increased the price of gas sold to plaintiff to cover the cost of extensions. That the drilling in Bossier Parish by plaintiff was principally for oil and plaintiff in its drilling in that locality found good oil wells. That nearly all, or at least ninety per cent, of the gas marketed by the plaintiff in Arkansas was purchased by it from the Reserve Company hereinbefore described, and there was no occasion for plaintiff to make extensions of its line to new gas fields, as the Reserve Company performed this service on a basis profitable to it, to the extent that said Reserve Company's pipe line as originally constructed in 1916 cost \$500,000.00 and from its operations since that date, the Reserve Company has returned \$100,000.00 in dividends to its stockholders; has paid seven per cent interest on \$600,000.00 preferred stock; and has invested about \$1,200,00.00 in additions to its plant and line, and all of said sums have been paid out of its earnings. In January, 1921, the Reserve Company had \$240,000.00 in its treasury.

(11) Denies that plaintiff's net operating revenues for the ten year period from 1911 to 1920, inclusive, amounted to only \$4,331,863.42, but says that its earnings were substantially greater than this, and that in plaintiff's statements of its operating expenses over said period, no amounts were charged to its

operations in the oil department of its business until the year 1919, although plaintiff had engaged extensively in searching for oil and purchasing and paying rentals on leases taken for oil, and that ever since the year 1919 plaintiff's books show that it has carried the expense of acquiring and carrying an extensive acreage not reasonably adjacent to its pipelines, acquired and carried only for its value in oil, as an expense of its gas business.

Denies that the undepreciated reproduction value of ~~the~~ plant used and useful in the natural gas business as of January 1st, 1922, was \$—; and that its depreciated value was \$—. Denies that its reproduction value of that date was \$8,000,000.00. Denies that the additions to said plant up to January 1st, 1922, plus the value of the original cost of acreage and gas leases acquired by the plaintiff amounted to \$9,876,614.22 as alleged in the complaint. Defendant denies that the going concern value of said plant is fifteen per cent of its original cost; and that there is required for its working capital not less than \$250,000.00; and defendant says in the hearing before the Railroad Commission in the year 1920, when its petition for increased rates that year was being considered, contended that the fair value of its property was \$6,000,000.00, which included about \$1,500,000.00 for the value of its leases, on the basis of \$200.00 per acre on its developed gas acreage and \$10.00 per acre on undeveloped. This same contention was made by its principal appraisal engineer at the hearing before the Railroad Commission in the year 1921, and its other appraisal engineer contended that the valuation of the plant, including the value of \$2,500,000.00 placed on its gas rights originally acquired from the J. C. Trees Oil Company was \$7,500,000.00, this containing a liberal valuation for its present leases.

All of plaintiff's leases for oil and gas were acquired by payments from its operating revenues, and the cost charged as part of its operating expenses, and in said cost was a large amount for acreage acquired by plaintiff for only its oil value and having no value for this purpose only.

12. Defendant is not advised definitely what plaintiff could have done in the matter of obtaining higher prices for its gas prior to the year 1919, when the Arkansas Corporation Commission was created, or whether plaintiff's contracts with the Little Rock Gas and Fuel Company and the Consumers Gas Company of Hot Springs prevented plaintiff from realizing increased revenues, but defendant says that the fixing of its rates and the making of future contracts was within the control of plaintiff prior to the year 1919, and the present ~~definite~~ consumers should not be charged with losses on imprudent contracts made by the plaintiff during that period; and defendant says that on the creation of the Arkansas Corporation Commission, plaintiff filed with its a schedule of rates, and they were allowed as first by plaintiff, and in the year 1920, plaintiff asked for an increase in rates, which was allowed. In the month of October, 1920, plaintiff filed a petition with the Arkansas Corporation Commission, asking for a further increase in rates, and later withdrew it. On December

In 1920 plaintiff filed with the Corporation Commission another petition for unconsolidated rates applying to all the territory served by plaintiff in which a classification of service was set forth, depending on the particular consumers of the gas rather than the amount consumed, gas economies for cooking, heating, lighting and household purposes; public & private residences and public schools, other public and number buildings, and furnaces and internal combustion engines, the last mentioned from 40¢ per thousand cubic feet to 43¢ 67½¢ being a discount of 2½¢ per thousand cubic feet for prompt payment in cash. For gas used under boilers and furnaces and for heating plants the rates varied from 47½¢ per thousand cubic feet for the first 2,500 cubic feet plus rate being 2½¢ per thousand cubic feet and that plus a percentage of 10% of the rates with the distributing companies, the proposed schedule plaintiff then furnished them with said schedule special contracts with them, but without discrimination of their option.

Another class of consumer economies and then for certain classes of consumers receiving the right to make contracts with the distributing companies for the delivery of gas and at its option make a division of the rates with the distributing companies, such contracts to be uniform and non-discriminatory. Under said schedule plaintiff was not to be required to supply gas to distributing companies for under boilers and furnaces except when, in the opinion of plaintiff there would be a gas without threat of shortage of gas to consumer.

A hearing was had before the Arkansas Corporation on said proposed schedule of rates and service on the 2nd day of _____, 19_____, and 2 days were consumed by the Commission in hearing testimony of plaintiff and the other said Commission was adjourned and its further hearing or adjournment was delegated to the Arkansas Railroad Commission, where the members of the Arkansas Railroad Commission were present 2 days in hearing testimony on said proposed schedule of rates and service, and after full consideration defendant decided that the proposed increase in rates and terms of rates above the original schedule should not be allowed, and an order to that effect was entered September 1st, 1921. Thereupon plaintiff filed with the Arkansas Railroad Commission a petition for a rehearing as required by law, and on this being overruled Plaintiff took an appeal to the Circuit Court for Pulaski County in the State of Arkansas. Thereupon the Secretary of defendant it was ordered to prepare a transcript of the testimony and proceedings before the Commission and to file it with the Clerk of the Circuit Court which was done and said transcript contained over 10,000 thousand pages of typewritten matter. The record and transcript was duly docketed in the said Circuit Court, plaintiff dismissed.

During 1/2 of said hearings before the Corporation Commission and Railroad Commission plaintiff contended that it did not desire to sell gas for use under boilers and furnaces, and as a result of this

attitude many industrial consumers have been driven from the use of gas to other fuels, which largely accounts for the loss of revenues of which the plaintiff now complains.

Plaintiff has made no application to the Railroad Commission for a different schedule of rates and service than that denied as hereinbefore described; neither has plaintiff submitted to said Commission or to the municipalities, in which gas supplied by it is consumed, its experience in the year 1921.

13. Defendant denies that plaintiff is drawing large supplies of gas from a rapidly diminishing source, and selling it at prices that do not yield a fair return on its property; and denies that it has operated its plant at a loss for a period of ten years. Defendant says that if plaintiff is suffering from a large loss of revenue, that is the result of waste of gas because of its contracts with the distributing companies in Little Rock and Hot Springs, the improvidence of these contracts, if they are improvident, should not be charged against present day consumers. Defendant says that each

of said contracts by their terms are still in force and the
145 parties are acting under them, and that a judicial inquiry would be necessary to ascertain whether the source of supply provided for in said contracts has become exhausted; and further that the Legislature did not delegate to defendant the legislative power to set aside contracts; nor did it have judicial power to bring in the necessary parties and adjudicate whether the contract that appeared on its face to be in force and was being acted on by the parties was or was not in force. Defendant further says that if the contract of plaintiff with the distributing companies serving the cities of Little Rock and Hot Springs are improvident, as plaintiff alleged, in that plaintiff must assume the loss of wastage of gas, which, plaintiff says, is seventeen times good practice in the city of Little Rock, and — times good practice in the city of Hot Springs, this loss, past and present, should not be charged against present day consumers.

Defendant denies that the provisions of Act Number 571 described in this paragraph of this complaint, not permitting any rates desired by the utility to be put in force by the filing of a bond by the utility, operated to confiscate the property of plaintiff and take its property for public use without compensation or deprived it of the equal protection of the law; and the defendant says that the said schedule of rates and service attempted to be put in force by plaintiff on December 31st, 1920, provided for exorbitant rates, based them on an unlawful classification by basing them on the nature of the use made of the gas by the respective consumers; and furthermore, said schedule left such large powers with plaintiff as to practically remove it from regulation by the state, and said schedule on its face was unlawful.

14. Defendant denies that under the acts of the Arkansas Legislature passed at the session of 1921, described in the complaint,

either the Railroad Commission or municipalities were delegated the legislative power to change, modify or disregard contracts, but that on the contrary, this power was expressly withheld by the Legislature.

146 15. Defendant denies that Act Number 443 of the Legislature of the State of Arkansas of its 1921 session, in failing and refusing to delegate to the Corporation Commission on the hearing on plaintiff's schedule of rates, power to modify or annul contracts disseminated against plaintiff and was void under the 14th amendment of the Constitution of the United States. Plaintiff says that the withholding of this power was in pursuance of the policy of the state in similar situations.

16. Defendant denies that in the year 1921 there was a contract between the plaintiff and the distributing companies in Little Rock and Hot Springs; and denies that it had power to adjudicate the question whether or not the contracts under which plaintiff and the said distributing companies were operating was fair.

— Denies that Act Number 443 of the Legislature of Arkansas at its 1921 session is invalid as an attempt to confer legislative power on a certain court, but says that the Supreme Court of Arkansas has had occasion to construe that and similar acts, and has held that the Circuit Court has power to make findings as to reasonable rates and regulation on trials de novo before said court; and denies that plaintiff had a right to abandon the special proceedings provided for by the laws of the State of Arkansas for a review of the case it had presented to defendant, and institute a suit in a court of equity to restrain the operation of rates put in force by plaintiff because defendant did not grant plaintiff the increased rates. Defendant says that plaintiff had plain and adequate remedies at law if it felt aggrieved at the action of defendant in denying its application for increased rates and the terms of service described in the schedule filed by plaintiff with defendant.

147 18. Denies that plaintiff has been unable to earn and has not earned a fair and reasonable return on the value of its property devoted to public use. Defendant denies that the functional capacity of plaintiff's plant is as good now as when its operations were first begun. Defendant denies that there is occasion for plaintiff to make extensions of its lines to new fields, and says that as hereinbefore explained, plaintiff purchases practically all of its gas from the Reserve Company, and that while it sells some gas to the Reserve Company, it is paid therefor by the Reserve Company at a price deemed fair by the parties to the arrangement, and that if plaintiff has occasion from time to time to extend its distributing line to new consumers, the increased revenue from this consumption will pay for these extensions.

Defendant denies that plaintiff faces the necessity of making expenditures for capital in enlarging its plant. Denies that the hazard of the business of plaintiff is such that it is entitled to earn a ten per cent income or that its depreciation is so great that it is entitled

to earn for this element six per cent. Defendant denies that plaintiff should have its capital investment in its property amortized over a period of years so that the future consumers of gas will be required to pay the plaintiff all it has invested in its plant. Denies that ten per cent is as little as persons who have invested their money in banking and merchandising and other forms of business expect to receive, and denies that such business enterprises receive annual profits of at least ten per cent; or that there is not an important hazard in all such businesses. Denies than an annual return of \$500,000.00 for amortization is reasonable and fair.

148 Denies that plaintiff's net earnings since July 1st, 1918, have averaged only \$600,000.00 per year. Defendant has no information on which to base a belief that the net earnings of plaintiff for the year 1921 was \$—. Defendant says that it has had no information from plaintiff or otherwise, as to the amount of plaintiff's revenues, gross or net, in the year 1921.

Defendant further says that plaintiff has never supplied it with a statement showing the amounts spent in the past for leases that were properly chargeable to its oil department and those properly chargeable to its gas department, and that the statement filed with defendant by plaintiff at the hearing before it in the year 1921, showed its gas and oil leases were charged to gas operations, to the extent of securing and maintaining leases on a very large acreage in no way adjacent to or within reasonable reach of plaintiff's pipe lines or those of the Reserve Company, and which were acquired and carried by plaintiff entirely for their value as oil properties, and at the expense of its gas earnings. That heretofore and now in its statements of account rendered to defendant and its predecessor, the Arkansas Corporation Commission, plaintiff charged all its expenses for replacements in its plant to operating expenses, and has so charged the expense of acquiring gas leases, and oil leases as herein explained, as well as the cost of drilling new wells as operating expenses.

Defendant denies that the rates now in force are unreasonably low, arbitrary or confiscatory.

19. Defendant further says that defendant announced to plaintiff its decision on plaintiff's application for increased rates in the month of May, 1921, but that defendant's formal order in the premises

was not entered until September, 1921, so that plaintiff could 149 have time to have a transcript made of the testimony and

proceedings before the Commission and filed with the Circuit Court of Pulaski County, Arkansas, before the expiration of the time allowed by law for such appeals; and that after said transcript was filed in the said Circuit Court defendant has been ready at any time to enter upon said hearing, and said hearing could have been had in the Circuit Court immediately after the transcript was filed with it in September, 1921, and that an appeal from the dicision of the Circuit Court in that review could have been taken, submitted and decided by the Supreme Court within sixty days after the transcript of the record was filed with them, and that if plaintiff had pursued

these remedies, its appeal could have been disposed of in the Supreme Court before this time.

That many of the consumers of natural gas served from the supply furnished by plaintiff could not afford to pay an increase over the rates now charged, and if the rates were increased, many of them would be forced to use other fuel without an adequate opportunity to secure it and install the applicances for burning it, and this at a time of the year when these conditions would cause the greatest hardship, without a corresponding benefit to the plaintiff.

20. Wherefore, defendant prays that the application herein for an interlocutory injunction be denied.

Objections to Jurisdiction.

Defendant further prays that the application of plaintiff herein for an interlocutory injunction be denied and that the complaint be dismissed for want of jurisdiction, and for cause says:

That under the constitution and laws of the State of Arkansas plaintiff has a remedy by appeal to the Circuit Court in having its application for increased rates and the proceedings of defendant thereon reviewed by said court; not only on the point of whether the rates were confiscatory, but also whether they were reasonable and would afford plaintiff an adequate return as distinguished from a return that would be sufficient to prevent the rates from being confiscatory, with full power in said Circuit Court to make findings of reasonable and adequate rates and conditions of service and certify them to defendant; and that under the laws and constitution of the State of Arkansas, an appeal from the decision of said Circuit Court is allowed to the Supreme Court of Arkansas to review the findings of the Circuit Court, and with full power in each of said courts to permit temporary rates and regulation of service pending those reviews; and that plaintiff has not invoked these remedies, but has abandoned them.

J. S. UTLEY,

Attorney General, State of Arkansas;

WM. T. HAMMOCK,

Assistant to the Attorney General;

HAMILTON MOSES,

ROSE, HEMINGWAY, CANTRELL &

LOUGHBOROUGH,

By _____,

*Appearing with the Attorney General on the
Application for Temporary Injunction.*

151 Filed Mar. 2, 1922. Sid B. Redding, Clerk, By — —
D. C.

In the United States District Court, Western Division, Arkansas,
Eastern District.

ARKANSAS NATURAL GAS COMPANY, Plaintiff,
vs.

ARKANSAS RAILROAD COMMISSION et al., Defendants.

All of the defendants herein except the Little Rock Gas and Fuel Company and the Consumers Gas Company of Hot Springs, ask that the denials, allegations and statements, and motion to dismiss contained in the pleading filed herein by the Arkansas Railroad Commission, and described as response of Arkansas Railroad Commission to petition of plaintiff for interlocutory injunction be taken as their answer herein.

(Signed)

J. S. UTLEY,

*Attorney General of the State of Arkansas
Railroad Commission and All Other De-
fendants Herein Except the Little Rock
Gas and Fuel Company and the Consumers
Gas Company of Hot Springs.*

152 Filed Mar. 2, 1922. Sid B. Redding, Clerk, By — —
D. C.

In the United States District Court, Western Division of Arkansas,
Eastern District.

ARKANSAS NATURAL GAS COMPANY, Complainant,
vs.

ARKANSAS RAILROAD COMMISSION et al., Defendants.

Response of Little Rock Gas & Fuel Company.

Little Rock Gas & Fuel Company, by its attorneys, Cockrill & Armistead, in response to the prayer for a temporary order herein, submits herewith its answer duly verified, and asks that it be taken as a part of this response. As set out in detail in said answer this defendant stands on its contract under which it has operated for more than ten years and is now operating.

This defendant prays first, that no temporary order be issued as against it, but as alternative relief prays that in the event a temporary order is issued which has the effect of raising gas rates generally and of ignoring its contract and putting it on a city gate rate, that this defendant be protected against being required to account to complainant on a city gate rate basis until it has had the opportunity

and time to seek such temporary raises and changes in its own rates as may be necessary to meet any extra cost it may be put to in serving its own consumers to the end that it will receive a fair return on its own property during the life of any such temporary order.

(Signed) COCKRILL & ARMISTEAD,
Attorneys for Little Rock Gas & Fuel Company.

153 Filed Mar. 2, 1922. Sid B. Redding, Clerk, by — — —, D. C.

In the United States District Court, Western Division of Arkansas, Eastern District.

ARKANSAS NATURAL GAS COMPANY, Complainant,

vs.

ARKANSAS RAILROAD COMMISSION et al., Defendants.

Answer of Little Rock Gas & Fuel Company.

Comes the Little Rock Gas & Fuel Company, by its attorneys, Cockrill & Armistead, and for answer to the bill of complaint herein states:

1. Little Rock Gas & Fuel Company is a corporation organized and existing under the laws of the State of Delaware, and is not a citizen or resident of the State of Arkansas, nor of the Western Division of the Eastern District of Arkansas, and the matter of determining whether the contract between the two companies was terminated because of the failure of the source of supply of gas or for any other reason does not raise a federal question, and this court has no jurisdiction thereof.

2. The schedule of rates filed by the Arkansas Natural Gas Company with the Arkansas Corporation Commission included certain specific city gate rates to be charged against the Little Rock Gas & Fuel Company. That company made itself a party to said proceedings before the Corporation Commission, filed its protest against the city gate rates, and alleged among other things that a contract existed between the two companies providing for compensation on a percentage basis of the rates actually collected, and that said contract precluded fixing city gate rates. The Corporation Commission was abolished by act of the legislature but by amendment to said act the application of the Arkansas Natural Gas Company for increased rates

154 and all other gas cases pending before the Corporation Commission were transferred to the Arkansas Railroad Commission for decision and the making of such orders and rates as might be appropriate for the fixing of rates within and without municipalities. All of these gas cases were heard by the Railroad Commission, which, among other things, refused to fix city gate rates as to the Little Rock Gas & Fuel Company. The Arkansas Natural Gas Company appealed from the decision and order of said

Commission, filed a transcript of the record of said proceeding in the Pulaski Circuit Court, and in all matters perfected and prosecuted its appeal and filed in the Pulaski Circuit Court a motion for a temporary order of injunction, and caused said appeal to be set down for final hearing on December 22, 1921. Thereafter the Arkansas Natural Gas Company filed a motion in the Pulaski Circuit Court, asking for an order dismissing its appeal. Little Rock Gas & Fuel Company filed a response to said motion to dismiss, setting up the above facts, and alleging that the object of the motion to dismiss the appeal was not for the purpose of praying another appeal or submitting to the judgment appealed from but for the purpose of attacking said judgment in another tribunal. The Little Rock Gas & Fuel Company offered to proceed with said final hearing in the Pulaski Circuit Court and objected and protested against any order dismissing said appeal unless same was dismissed as to it with prejudice. The Pulaski Circuit Court entered an order dismissing said appeal without prejudice. Thereafter the Arkansas Natural Gas Company filed this bill of complaint.

(a) This defendant alleges that the Circuit Court of Pulaski County and the Supreme Court of the State have power and jurisdiction to exercise the legislative functions of reviewing said order of the Railroad Commission and causing to be certified to such Commission orders of the court confirming, modifying or fixing rates,
155 and states that this court has no jurisdiction to proceed with the hearing of this case because the Arkansas Natural Gas Company did not prosecute its appeal from the order and decision of the Railroad Commission, and states that its voluntary dismissal of said appeal is a bar to any further proceedings, reviewing or attacking said order.

(b) This defendant states that if it be determined that the Pulaski Circuit Court and the Supreme Court of Arkansas had the power and jurisdiction to act only in a strictly judicial capacity in the hearing and determination of said appeal, and that all legislative proceedings terminated with the decision and order of the Arkansas Railroad Commission, then the Little Rock Gas & Fuel Company states that the Arkansas Natural Gas Company had its election to attack the order of said Commission on the ground of confiscation by appeal to the state court or by filing a suit in this court, and that having elected to appeal to the state court and prosecuting its appeal to the extent hereinbefore set up, and abandoning that appeal, it is now estopped and barred from now prosecuting this suit in this court.

3. This defendant alleges that neither the Arkansas Corporation Commission nor the Arkansas Railroad Commission has or had any jurisdiction or power over rates between the Arkansas Natural Gas Company and the Little Rock Gas & Fuel Company, and that the legislature cannot constitutionally confer on a commission power to regulate rates between two public utilities. This defendant alleges that it is a private and not a public consumer of the Arkansas Natural Gas Company, and that the public is not interested in the arrangements between the two public utilities. It alleges that one public

utility taking gas from another does not do so as a part of the public, and that the service thus rendered by the producing company is not a public service over which the Commission can lawfully be given jurisdiction.

156 4. This defendant alleges that the fixing of city gate rates is the foundation and basis of the rate within the city, and that the fixing of a city gate rate is for all intents and purposes the fixing of the rate within the city, and that the Arkansas Railroad Commission has no power to fix rates within cities and, therefore, has no power to fix city gate rates.

5. This defendant alleges that the Arkansas Railroad Commission had no jurisdiction or power to modify or impair any existing contracts for supplying gas to distributing companies, and that the act under which said Commission was acting, not only prohibited such a power but provided that no such contracts should be affected by the act under which said Commission was acting or the act of which that was an amendment. It alleges that the contract between it and the Arkansas Natural Gas Company was an existing contract within the meaning of that act, and that the legislature renounced the right of conferring on said Commission the legislative power of modifying or impairing existing contracts.

This defendant denies that the limitation in said act does not apply to any other utility company in Arkansas engaged in the natural gas business, but alleges that said limitation applies to all existing contracts for supplying gas between all utilities engaged in the natural gas business, which is a proper and valid classification, and it denies that said act is discriminatory as to the Arkansas Natural Gas Company, and denies that it is void and in violation of the rights guaranteed to complainant under the 14th Amendment of the Constitution of the United States.

6. This defendant states that if it be held that that part of the act of the Arkansas Legislature, which provides that the
157 Arkansas Railroad Commission had no power to interfere with existing contracts, is void, then it does not follow that said contract was annulled, but said contract is binding on both parties, subject to revision, change, abrogation or such action, by said Railroad Commission as the public good requires, and this defendant states that this court has no jurisdiction to enjoin, or should not enjoin, it from enforcing said contract, because said contract operates harshly against the Arkansas Natural Gas Company, or because the Arkansas Railroad Commission declined to ignore said contract, or for any reason set out in the bill of complaint.

7. This defendant alleges that it has an existing contract with the Arkansas Natural Gas Company, and states that the facts relative thereto are as follows:

The Arkansas Natural Gas Company had gas leases in Caddo Parish, Louisiana, and in Texas, and some going wells in what was called the Caddo gas fields. It had to have a market for that gas. Little Rock was its goal. The Pulaski Gas Light Company (now

Little Rock Gas & Fuel Company) owned and operated an artificial gas company in Little Rock and Argenta. The Arkansas Natural Gas Company on December 8, 1909, made a preliminary agreement with the Pulaski Gas Light Company to construct a pipe line from its gas fields to Little Rock in consideration that the Pulaski Gas Light Company would abandon its artificial plant and conform its distributing lines to a lower pressure of eight ounces suitable for the distribution of natural gas, and made a contract to distribute natural gas bought exclusively from the Arkansas Natural Gas Company. Under that contract the Pulaski Gas Light Company agreed to procure a franchise for the distribution of natural gas satisfactory to the Arkansas Natural Gas Company, and compensation was to be fixed on the percentage of the proceeds collected by the Pulaski Gas

Light Company. Said contract is attached to the bill of
158 complaint herein as Exhibit "C".

On January 20, 1910, Pulaski Gas Light Company made the "Business Men's League" contract, in which the Pulaski Gas Light Company bound itself to secure the pipe line from the gas fields, and the Business Men's League agreed to assist in getting rights-of-way and a satisfactory franchise, in consideration that a schedule of rates be maintained for five years running from ten cents to forty cents per thousand cubic feet. Said Business Men's League's contract is attached to the bill of complaint herein as Exhibit "E". About that time a franchise was granted by the City of Little Rock to the Pulaski Gas Light Company, running until 1940, allowing a maximum rate of fifty cents per thousand cubic feet to be charged by the Pulaski Gas Light Company.

On February 16, 1910, a permanent contract was made between the Arkansas Natural Gas Company and the Pulaski Gas Light Company along the lines of the preliminary agreement. That contract is attached to the bill of complaint herein as Exhibit "R."

On April 15, 1910, a supplemental agreement was made between the two companies which is exhibited with the bill of complaint herein as Exhibit "F." On June 10, 1911, an amendment was made to the Business Men's League contract which recited that the contract entered into by the Pulaski Gas Light Company was made for and on behalf of itself, and was later assigned to the Arkansas Natural Gas Company, and that the latter company agreed to bring natural gas to the city of Little Rock provided a concession was made by the city of Little Rock and the Business Men's League in said contract, whereby the minimum rate for natural gas for manufacturing purposes fixed at ten cents per thousand cubic feet in said contract should be increased to twelve and one-half cents per thou-

159 sand cubic feet. Under said contract said Business Men's League agreement was amended, fixing the minimum rate of gas for manufacturing purposes at twelve and one-half cents per thousand cubic feet instead of ten cents per thousand cubic feet. Copy of said contract is attached hereto, marked Exhibit "A" and made a part hereof.

One June 26, 1912, a supplemental agreement was made between the Arkansas Natural Gas Company and the Little Rock Gas &

Fuel Company, successors of Pulaski Gas Light Company, relating to service to the railroad company and the Arkansas Brick & Manufacturing Company, and in 1915 another agreement was made relating to the Brick Company's business.

The contract of February 16, 1910, recites that the Arkansas Natural Gas Company "has and holds certain lands and natural gas wells in the Parish of Caddo, State of Louisiana, and elsewhere," but there was nothing in that phrase or nothing in that contract to indicate that the lands then owned were intended as the sole source of supply. The contract bound the Little Rock Gas & Fuel Company to purchase all of its gas from the Arkansas Natural Gas Company, and bound the latter company to "sell and furnish from the lands now held by it or such other lands as it may acquire, that may be tributary to the system of pipe lines contemplated by these presents," all the natural gas it may need.

The Little Rock Gas & Fuel Company alleges that the Caddo fields and the original source of supply of the Arkansas Natural Gas Company played out as early as 1913, and that extensions were made to various other fields as set out in the bill of complaint herein. The Little Rock Gas & Fuel Company states that if said contract contemplated that gas was to be furnished from the Caddo fields as the sole source of supply, that when that source of supply played out, it became the duty of the Arkansas Natural Gas Com-

160 pany to terminate the contract or to indicate to the Little

Rock Gas & Fuel Company that it was under no further obligation to furnish gas under said contract which was procured from other and remote fields. The Little Rock Gas & Fuel Company alleges that on the contrary, in the spring of 1914, Mr. Dalley, representing the Arkansas Natural Gas Company called on the owners of the Texas Company in New York and on Mr. Dawes in Chicago, representing the owners of the Southwestern Company, and got up the reserve line scheme. Mr. Dawes also represented the owners of the Little Rock Gas & Fuel Company, and Mr. Dalley knew that Mr. Dawes was interested in getting into the reserve line scheme so as to enable the Arkansas Natural Gas Company to continue to supply the Little Rock Gas & Fuel Company. The reserve line scheme was in effect the joining of three companies in the building of one pipe line instead of three separate pipe lines into the De Soto Parish. The Arkansas Natural Gas Company adopted the common line plan, and thereafter continuously recognized the validity of the contract between the Arkansas Natural Gas Company and the Little Rock Gas & Fuel Company, and thus effectively made the reserve line a part of its pipe line system within the meaning of the contract, and thus effectively made the other gas fields acquired tributary to the system of pipe lines contemplated. In March, 1915, Mr. Dalley wrote a letter to the Little Rock Gas & Fuel Company, referring to the fact that the Caddo fields had played out, which had made it necessary for the Arkansas Natural Gas Company to go to De Soto Parish, thus increasing the cost, and quoted in said letter rates for the Little Rock Gas & Fuel Company to charge "under our contract." That letter and all other actions of the Arkansas Natural Gas Com-

pany thereafter completely recognized the fact that the Arkansas Natural Gas Company regarded the contract as still in force,
161 and constituted an interpretation by the Arkansas Natural Gas Company that its lines tributary to the reserve line were regarded as tributary to its pipe line system.

The Business Men's League contract did not expire until July, 1916. The Arkansas Natural Gas Company continued to live up to that contract long after the Caddo field had played out. At the end of that contract the Arkansas Natural Gas Company raised its rates to its own consumers and began to demand of the Little Rock Gas & Fuel Company similar raises. The Little Rock Gas & Fuel Company complied with the demands, and made raises under the terms of the contract on July 1, 1916, January 1, 1918, August 1, 1918, and January 1, 1920. The Little Rock Gas & Fuel Company also complied with the demands of the Arkansas Natural Gas Company for a raise up to fifty cents per thousand cubic feet on September 22, 1920, by filing a schedule similar to that filed by the Arkansas Natural Gas Company. Each of said raises was made in response to demands made by the Arkansas Natural Gas Company under the terms of the contract between them, and was a continuous recognition of that contract and a construction and interpretation thereof. In 1915 a supplemental agreement was made between the two companies relating to the supplement agreement of June 26, 1912, which involved the furnishing of Arkansas Brick & Manufacturing Company with industrial gas under the terms of said contract which was another recognition of the existence of that contract.

On December 24, 1920, the Arkansas Natural Gas Company wrote a letter to Little Rock Gas & Fuel Company reciting that the Little Rock Gas & Fuel Company's contract contemplated the Caddo fields as a source of supply, reminded the Little Rock Gas & Fuel Company that those fields were exhausted, and that the gas was now being obtained from a more remote territory, suggested a
162 new contract and notified the Little Rock Gas & Fuel Company that if the new arrangement suggested was not acceptable, it would file a schedule putting the Little Rock Gas & Fuel Company on a city gate basis. This letter was the first notice to the Little Rock Gas & Fuel Company that the Arkansas Natural Gas Company regarded the contract at an end or that it could put an end to it, and was the first hint or intimation of a city gate rate.

8. The Little Rock Gas & Fuel Company denies that said percentage contract resulted in wasteful methods by the Little Rock Gas & Fuel Company in the conduct of its business, and denies that said contract was unfair for the reason that all unaccounted for gas, including gas lost thru leakage in the distributing lines, became a loss to the producing company; denies that Little Rock Gas & Fuel Company is not careful in handling collections or obtaining proper security for gas sold or in carrying on its business efficiently; denies that there is any waste or bad practices upon its part under the contract or in its business; denies that there was any failure to keep its plant repaired. Little Rock Gas & Fuel Company denies that

the unaccounted for gas in the Little Rock plant amounted to the figure set out in the bill of complaint herein, but states that it has at all times maintained its plant in good condition. It states that normal leakage and the normal unaccounted for gas under a good management and efficient maintenance and operation is large and that if the unaccounted for gas is abnormal because of faulty construction or maintenance of the distributing system, obligations to respond therefor arose under the contract. The contract fixing the percentages to be paid to the Arkansas Natural Gas Company took into consideration the fact that the Arkansas Natural Gas Company bore the loss from leakage, and if it has developed that percentage contracts are no longer desirable, that fact did not give to the Arkansas Natural Gas Company or to the Railroad Commission or to the courts any power or authority to set aside the contract.

9. This defendant states that it has no knowledge or means of knowing the amount of leakage occurring in its plants, and that for several years past the Arkansas Natural Gas Company has had installed at the city boundary an office meter which estimates the amount of gas passing into the city lines, and has known the difference between that amount and the amount of gas accounted for, which is termed unaccounted for gas. Notwithstanding that the Arkansas Natural Gas Company has never notified it of the amount thereof, has never protested against any abnormal leakage, has never made any complaint, and the first information received by the Little Rock Gas & Fuel Company of any facts relating thereto, was the testimony of the witnesses for the Arkansas Natural Gas Company in the hearing of this case before the Arkansas Corporation Commission. This defendant states that since that time it has given extra attention to that matter, has spent many thousands of dollars looking for and endeavoring to minimize leakage, but apparently according to the records of Arkansas Natural Gas Company without improvement. This defendant states that it intends to do its utmost towards minimizing leakage, but states that ignoring said contract and putting it on a city gate rate and thus charging against it all unaccounted for gas, normal as well as abnormal, will charge this defendant with hundreds of thousands of dollars, the burden of paying which must largely fall upon its own consumers, and will necessitate the raising of rates by this defendant from its own consumers.

Wherefore, Premises considered, defendant prays that the first prayer of the bill of complaint herein, asking this court to 164 issue a temporary injunction, enjoining the Arkansas Railroad Commission and the Little Rock Gas & Fuel Company from enforcing the contract between the Arkansas Natural Gas Company and the Little Rock Gas & Fuel Company and from interfering with complainant in its right to establish city boundary rates for the cities of Little Rock and Argenta, be denied, and prays that the second prayer of the bill of complaint herein, asking that this court make said injunction perpetual and that it find that the

obligations of the contract between the Little Rock Gas & Fuel Company and complainant are of no binding force and that said contract has expired, be denied.

(Signed) COCKRILL & ARMISTEAD,
Attorneys for Little Rock Gas & Fuel Company.

165

Affidavit.

STATE OF ARKANSAS,
County of Pulaski, ss:

W. F. Booth, being first duly sworn, states:

My name is W. F. Booth. I am and have been for some years manager of the Little Rock Gas & Fuel Company, and active in the management of its affairs. The Little Rock Gas & Fuel Company is a corporation, organized under the laws of the State of Delaware. I have full power and authority to verify the above and foregoing answer in its behalf. I have read the above and foregoing answer and am familiar with the averments therein contain, and the matters and things therein stated as facts are true. And the matters and things stated upon belief, I verily to be true.

Subscribed and sworn to before me this — day of —, 1922.

_____,
Notary Public.

166

EXHIBIT "A."

Amendment to Contract Between the Business Men's League of Little Rock, Arkansas, and the Pulaski Gas Light Company of Little Rock, Arkansas.

Whereas; Heretofore a contract was entered into by and between the Business Men's League of Little Rock, Arkansas, a corporation organized under the laws of the State of Arkansas, as party of the first part, and the Arkansas Natural Gas Company and the Pulaski Gas Light Company, a corporation organized and doing business in the City of Little Rock, Arkansas, party of the second part, whereby under terms and conditions named in said contract, the second party agrees to bring natural gas from the Caddo fields in the State of Louisiana and distribute the same to the consumers in the City of Little Rock, and

Whereas; Said contract was made with the sanction and consent of the City of Little Rock, as expressed by resolutions duly passed by the City Council of the City of Little Rock, upon which said contract and ordinance was duly passed by the City of Little Rock, providing for the introduction and distribution of such natural gas and,

Whereas, It appears that the contract entered into by the Pulaski Gas Light Company was made for and on behalf of itself and was later assigned to the Arkansas Natural Gas Company, which latter

company agreed to bring natural gas to the City of Little Rock, provided a concession was made by the City of Little Rock and the Business Men's League in said contract, whereby the minimum rate for natural gas for manufacturing purposes fixed at ten cents per thousand cubic feet in said contract should be increased to twelve and one-half cents per thousand cubic feet, and

Whereas; The said Arkansas Natural Gas Company has applied to the City Council of the City of Little Rock for authority to make such increase from ten cents per thousand cubic feet to twelve and one-half cents per thousand cubic feet, in order that the bonds necessary for the building of said gas line might be sold and represented to the City of Little Rock and the Business Men's League; that said bonds could not be sold unless said concession was made, and

Whereas; On the 11th day of July, 1910, the City Council of the City of Little Rock, by resolution, duly passed and approved by W. R. Duley, Mayor, consented to the raising of said minimum rate from ten cents per thousand cubic feet to twelve and one-half cents per thousand cubic feet and authorized and empowered the Business Men's League to so amend said contract as to grant said increase.

Now, Therefore, It is hereby agreed and contracted by and between the Business Men's League of the City of Little Rock, party of the first part, and the Arkansas Natural Gas Company and the Pulaski Gas Light Company, parties of the second part, that the former contract herein referred to be and is so amended that the minimum rate for gas for manufacturing purposes shall be fixed at twelve and one-half cents per thousand cubic feet instead of ten cents per thousand cubic feet wherever in said contract the rate reads "ten cents per thousand cubic feet."

In witness whereof, The parties hereto have affixed their signatures on this 10th day of January, 1911.

167

LITTLE ROCK BUSINESS MEN'S
LEAGUE,

By CHAS. MCKEE,
President.
H. F. AUTEN,
Secretary.

PULASKI GAS LIGHT COMPANY,
By H. M. DAAWES,
President.

E. CHANDLER BEACH,
Sec'y.

ARKANSAS NATURAL GAS COM-
PANY,

By J. C. TRÉES,
President.
W. J. DIEHL,
Sec'y.

168 Filed Mar. 8, 1922. Sid B. Redding, Clerk, by — — —
D. C.

In the U. S. District Court, Western Division of Arkansas, Eastern
District.

ARKANSAS NATURAL GAS COMPANY, Complainant,
vs.

ARKANSAS RAILROAD COMMISSION et al., Defendants.

*Separate Response of Consumers Gas Company to Application for
Temporary Injunction.*

Comes the Consumers Gas Company, and in response to Complainant's application for temporary injunction herein, states:

1. That it is a domestic corporation organized and existing under the laws of the State of Arkansas, and a citizen and resident of the Western Division of the Eastern District of Arkansas.

2. Respondent states that prior to the filing of this action, complainant filed a schedule of rates with the Arkansas Corporation Commission, under which schedule of rates city gate rates were charged against respondent. That respondent entered its appearance in said cause before the Arkansas Corporation Commission and therein filed its protest against the city gate rates, alleging as a ground for such protest that the contract, which is set out in full as Exhibit "G" to complainant's complaint, was in full force and binding on complainant and respondent. That said contract among other things provided for compensation to complainant in the sale of its gas on the percentage basis of the rates actually collected and that said contract precluded any change in the rates, and especially the establishment of city gate rates. After the filing of said protest, the Corporation Commission was abolished by act of the Legislature, and all matters then pending before the said Corporation Commission

were transferred by said act of the Legislature to the Arkansas Railroad Commission for further decision and for such orders

that might be appropriate in the fixing of rates within and without municipalities. That a hearing was had before the Railroad Commission on complainant's application for change of rates and respondent's protest, resulting in the Railroad Commission refusing to fix city gate rates and re-establishing the rates as provided for by the contract made a part of complainant's complaint as Exhibit "G." That among other things in said act transferring said litigation from the Arkansas Corporation Commission to the Arkansas Railroad Commission, it was provided that application from the decision of any order of the Arkansas Railroad Commission should be made to the Circuit Court and to the Supreme Court of Arkansas. That after the rendition of said decision and order, maintaining the schedule of rates as provided for in the contract between

complainant and respondent, an appeal was duly prosecuted by complainant to the Pulaski Circuit Court within the time and in the manner provided by law, and said appeal was set down for final hearing December 22, 1921. Thereafterwards complainant filed a motion in the Pulaski Circuit Court, asking for an order dismissing its appeal. On the hearing of said motion the Pulaski Circuit Court dismissed said appeal without prejudice to complainant and thereafterwards complainant filed this bill of complaint.

3. Respondent further states, that the Pulaski Circuit Court and the Supreme Court of Arkansas had power and jurisdiction to exercise the legislative functions of modifying and fixing rates, under the laws of the State of Arkansas, and that said remedy was just, adequate and complete, and that this court has no jurisdiction to proceed with the hearing of this cause, because complainant had a complete and adequate remedy at law by appeal and final hearing in the Pulaski Circuit Court, and appeal therefrom, if necessary, to the Supreme Court of this State. That its voluntary dismissal of said appeal is a bar to further proceedings herein.

4. Respondent states that if it is determined that the Pulaski Circuit Court and the Supreme Court of Arkansas were without the power and jurisdiction to act in any other than a strictly judicial capacity, and that the legislative proceedings as to the fixing of rates terminated with the decision and order of the Arkansas Railroad Commission, then complainant had its election to attack the order of said Commission on the ground of confiscation by appeal to the State Court or by filing a suit in this Court. That it elected to appeal to the State Court, and thereby estopped itself and is now estopped and barred from filing a suit in this Court.

5. Respondent further states, that in the proceedings before the Arkansas Corporation Commission, subsequently transferred to the Arkansas Railroad Commission, it filed its protest to complainant's application for increase of rates, in which it alleged, among other things, that respondent prior thereto instituted an action in the State Courts to enjoin complainant from changing the established rates under the terms of a contract dated January 30, 1911, between the complainant and the Hot Springs Gas Company, to which contract respondent afterwards became an assignee by agreement with complainant.

That said contract was in full force and effect and binding between the parties thereto and respondent raised the question as to the validity of the contract existing between complainant and respondent and that complainant therein denied the existence and validity of said contract, and alleged as further defense that said contract was not binding for the reason that it had been required and at that time was taking and receiving gas from new and different fields than was anticipated by the terms of the contract, and that the gas supply from the fields anticipated by the contract had become exhausted. That judgment was rendered in this Court and an appeal prosecuted to the United States Circuit Court of Appeals,

Eighth Circuit, and decree finally rendered therein at a December Term, 1919, of said Court in the cause pending therein, wherein the Arkansas Natural Gas Company was appellant and respondent was appellee. By said decree it was determined, adjudged and decreed that the contract existing between complainant and respondent was in full force and effect, and respondent pleaded the said decree of the Court in bar of the right of any action of the Arkansas Railroad Commission to change the rates, or otherwise interfere with the terms of said contract between complainant and respondent, and it now pleads the decree rendered in said cause in the United States Circuit Court of Appeals, Eighth Circuit, at its December, 1919, Term, No. 5471, in complete bar of any action herein, or the action by any other court, and states that the determination as to the validity of said contract has been fully adjudicated.

7. Respondent further states, that under the terms of the contract existing between it and complainant, the charges for gas are fixed and established, and that the Arkansas Railroad Commission has not jurisdiction to re-arrange or change such rates, and that the Legislature of Arkansas cannot constitutionally confer on such Commission power to regulate rates between complainant and respondent. That respondent is a private as distinguished from a public consumer of complainant's gas, and that the contract existing between complainant and respondent is of a private nature as distinguished from a public nature, and that the complainant in delivering gas to respondent is acting in a private capacity, and not in the capacity of a public service corporation, over which the Corporation Commission would have jurisdiction.

8. Respondent further states, that the Arkansas Railroad Commission has not jurisdiction to fix city gate rates, and that 172 exclusive jurisdiction for the purpose of fixing the city gate rates is vested in the Hot Springs City Council. It states that the fixing of city gate rates is the basis of the rates within the city of Hot Springs, and that the fixing of the city gate rates is for all practical purposes the fixing of rates within the city of Hot Springs, over which the Hot Springs City Council has exclusive jurisdiction.

9. Respondent further states, that the Arkansas Railroad Commission has no jurisdiction or power to modify the existing contract between respondent and complainant for supplying gas for distribution, and that the act under which said Commission was and is now acting, not only prohibited such power, but the Legislature especially refrained from conferring on said Commission the power to modify, impair or otherwise change the terms of said existing contract. That said limitation applies to all utility companies in Arkansas engaged in natural gas business, in so far as existing contracts are affected.

10. Respondent further states, that on the 30th day of January, 1911, complainant entered into a written contract with the Hot Springs Gas Company, which is made Exhibit "G" to complainant's complaint. That subsequent thereto the rights of the Hot Springs

Gas Company were transferred and assigned, and all rights thereunder of the Hot Springs Gas Company are now owned by respondent. That at the time said contract was entered into complainant owned gas rights and leases in the States of Louisiana, Texas and Arkansas, and prior to the time said contract became effective, it has entered into a contractual obligation with the Little Rock Gas Company, under the terms of which it agreed to furnish gas to the Little Rock Gas Company, a copy of said contract being attached to complainant's complaint. That in order to enlarge the sale of its gas it

173 entered into the contract aforesaid with the Hot Springs Gas Company, under the terms of which it agreed to build a branch line from the city of Malvern, Arkansas, to the city of Hot Springs, and to connect same with the distributing pipe in the city of Hot Springs, at the city border. That in the negotiations leading up to said contract with the Hot Springs Gas Company, and in said contract complainant represented that it was the owner of gas rights and leases in the States of Louisiana, Texas and Arkansas, and would be able to supply natural gas for the period of twenty years, or longer, considering the rock pressure and other physical conditions surrounding its gas holdings. In consideration of the furnishing of such gas, the Hot Springs Gas Company, which then owned and operated the Hot Springs franchise for the distribution of artificial gas in Hot Springs and vicinity, agreed that the artificial plan would be abandoned and the distributing lines reconstructed in order to make said lines adaptable for the use and distribution of natural gas, and that the cost of such changes amounted to the sum of — dollars. That it further agreed and actually obtained a franchise from the City of Hot Springs, under which it was given the exclusive right in the distribution of natural gas within the city limits of the City of Hot Springs, Arkansas. That such agreement was made on behalf of the respondent and its assignor in consideration of the contractual agreement on the part of complainant of its ownership of gas wells and leases in Louisiana, Texas and Arkansas of sufficient size and durability to comply with the terms of the contract between complainant and respondent's assignor, and its further contractual agreement that during the term of the contract it "will from time to time, by drilling and developing its present gas territory, and by acquiring, drilling and developing additional territory tributary to its present plant, endeavor to the best of its ability, and so long as it may be reasonably profitable, to furnish and provide an adequate supply of natural gas to the Hot Springs Company, in sufficient volume to meet the requirements of its consumers" * * *. That compensation therefor was fixed on the percentage of the proceeds of the sale of gas by the Hot Springs Gas Company.

11. That in pursuance of said contract, respondent or its assignor obligated itself to a large expenditure of money amounting to the sum of — dollars in remodeling its plant for the distribution and sale of natural gas, and in additional large sums of money and effort in inducing its patrons of artificial gas and other citizens and residents of the city of Hot Springs to discontinue the use of other fuels for heating and power purposes, and use in its place for heating and

power purposes natural gas. That at the present time practically all the citizens and residents in the city of Hot Springs and vicinity are now using for heating and power purposes natural gas, and have expended large sums of money in adapting their boilers and power plants to the use of natural gas, under respondent's and its assignor's representation that such gas would be available for the life of the contract, which will expire the 30th day of January 1931.

12. The contract dated January 30, 1911, between complainant and Hot Springs Gas Company, recited that complainant was the owner of gas rights and leases in the States of Louisiana, Texas and Arkansas. That after the signing of said contract, complainant furnished gas in pursuance thereof and continued with the developments of its field from time to time, as its necessities required, in the original gas fields, and acquired, drilled and developed additional territory, which was reasonably tributary to its then plant and fields, and as a result of such developments it is now furnishing and is able to furnish indefinitely by developing territory reasonably tributary to its present fields, sufficient gas to comply with its 175 contract with respondent. The contract bound the Hot Springs Gas Company to purchase all of its gas used in the city of Hot Springs from complainant, and bound complainant to furnish such gas as was required, subject to the limitations prescribed by the terms of the contract. That said contract was mutual and binding on the parties thereto, and for adequate consideration.

13. Respondent is informed and believes that complainant subsequent to entering into said contract, did acquire, drill and develop additional territory for the purpose of supplying gas under the terms of the contract with the Hot Springs Gas Company. The extent of such additional development or any notice thereof was not given or brought to the attention of respondent until and during the trial of the litigation between respondent and complainant hereinbefore referred to, which was during the year 1920. That prior to the year 1920 the complainant had entered into new gas fields, and particularly into the "Bossier" Field (from which field it is now furnishing gas), and at no time notified respondent that the contract dated January 30, 1911, was not binding on them, and to the contrary proceeded and operated fully and completely under the terms thereof and thereby recognized the validity of said contract at all times.

14. Respondent further states, that complainant is seeking a revision of the rates in the sale of its domestic gas; that the City of Hot Springs is a town of approximately twelve thousand inhabitants; that a vast number of the inhabitants and citizens in the use of gas will be subject to a domestic rate, and to the contrary not to exceed — occupations or businesses in the city of Hot Springs are subject to the industrial rate. That if the contract between respondent and complainant is not effective and the city gate rate is established, the present consumers of gas in Hot Springs, or a vast majority thereof, having a domestic rate will be required to substitute 176 the use of coal and other fuel in place of natural gas, and thereby respondent's business will be destroyed, or such an amount thereof to such an extent that its further continuance of the

sale of natural gas will not be profitable, and the expense or cost of operating its present natural gas plant would be a direct loss to it.

15. Respondent further alleges, that at all times during the continuance of the contract between complainant and the Hot Springs Gas Company it has complied strictly with the terms of said contract by maintaining its pipeline and distributing system at a large cost to itself for the purpose of preventing wastage, and at all times has been careful in handling its collections and obtaining proper security for gas sold and in carrying on its business efficiently. That for such purpose it has in its employ expert gas and office employees, such as are necessary for the proper administration and conduct of its business. That a certain amount of leakage in the conduct of its business can not be avoided under good management, and therefore if an abnormal leakage has existed in the conduct of its business, the same was unknown to respondent, and that during the period that said contract has been in force its attention was not called to such leakage until evidence was taken in the proceeding which pended before the Arkansas Corporation Commission. That knowledge thereof, if such leakage existed, was in the possession of complainant and respondent had no means of knowing that such leakage occurred, except by being informed thereof by complainant.

16. Respondent further states that it has no information or belief as to the value of complainant's original property, additional properties purchased, its original and additional equipment, maintenance, cost of maintenance, and other operating expenses, and therefore requests that it will be held to strict proof thereof.

Wherefore, Respondent, the Consumers Gas Company, asks
177 that this be taken as a response to complainant's application for temporary injunction, enjoining the Arkansas Railroad Commission and the Consumers Gas Company from enforcing the present contract between complainant and Consumers Gas Company, and from interfering with complainant in its right to establish city gate rates for the city of Hot Springs and vicinity; that said application be denied and for other equitable relief.

CONSUMERS GAS COMPANY,
By MARTIN, WOOTTON & MARTIN,
Attys.,
By E. H. WOOTTON.

178 UNITED STATES OF AMERICA,
Eastern District of Arkansas,
Western Division:

Be it remembered, that at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the seventeenth day of October Anno Domini, One Thousand, Nine Hundred and Twenty-one at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber, Judge presiding and holding said Court, the following proceedings were had, to-wit:

March 8th, 1922.

No. 2062.

ARKANSAS NATURAL GAS COMPANY

vs.

ARKANSAS RAILROAD COMMISSION et al.

Now on this 8th day of March, 1922, parties appearing by their solicitors, Messrs Moore, Smith, Moore and Trieber, Mr. W. B. Smith for the complainant, and Messrs Rose, Hemingway, Cantrell, & Loughborough, Mr. J. F. Loughborough, for the defendants, and having introduced all of their proofs, both for the complainant and for the defendants, and closed their proofs in the case, the matter of granting a temporary injunction herein on the application of the complainant, on the pleadings, proofs and arguments, of counsel, is submitted to the Court for decision, on the application for a temporary injunction, counsel for the Railroad Commission requesting and being granted leave to file a brief or argument on the facts on the 9th day of March, next ensuing, and no further time, the case stands submitted to the Court for decision, and the same is taken under advisement by the Court.

(Signed)

KIMBROUGH STONE,
Circuit Judge.
JACOB TRIEBER,
JOHN H. POLLOCK,
District Judges.

179 UNITED STATES OF AMERICA,
Eastern District of Arkansas,
Western Division:

Be it remembered, That at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 3rd day of April Anno Domini, One Thousand, Nine Hundred and Twenty-two at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Kimbrough Stone, Circuit Judge and Honorable Jacob Trieber and John H. Pollock, District Judges presiding and holding said Court, the following proceedings were had, to-wit; on June 6th, 1922:

180 In the United States District Court for the Western Division
of the Eastern District of Arkansas.

ARKANSAS NATURAL GAS CO., Complainant,
vs.

ARKANSAS RAILROAD COMMISSION, CITY OF PINE BLUFF, TOWN OF Sheridan, Town of Alexander, City of Benton, Town of Haskell, City of Malvern, City of Arkadelphia, Town of Gurdon, City of Prescott, Town of Emmett, City of Hope, Town of Garland, Town of Fouke, Town of Traswood, Little Rock Gas & Fuel Co., and Consumers Gas Company, Defendants.

Order.

The application for a temporary injunction having been heard at the present term of court by the undersigned judges and having been submitted and being now sufficiently advised and reserving the filing of opinions hereafter, it is ordered, adjudged and decreed that all of said defendants (except the Little Rock Gas & Fuel Company, and the Consumers' Gas Company), their agents and attorneys, successors and assigns and all other persons acting by through or under any of said defendants be and are hereby enjoined from in anywise enforcing each, all and every one of the rates for gas furnished by the complainant in effect now and from interfering with plaintiff in its right to establish other higher and different rates for gas supplied to its patrons in the several municipalities, incorporated and unincorporated, and said Arkansas Railroad Commission and the members thereof be enjoined from entertaining complaints against the plaintiff on said account and the other defendants and persons acting by through or under any of said defendants, from making complaints against plaintiff either before said Arkansas Railroad Commission or before any other tribunal except this court on account of its 181 installing other higher and different rates.

And all of the said defendants and all other persons acting by, under and through said defendants, are enjoined from taking any action before any tribunal in the State of Arkansas seeking in anywise to enforce now existing rates or to interfere with said complainant in its right to install other higher and different rates, except as hereinbefore provided.

If the plaintiff in establishing new rates makes them so high as to be inequitable or unjust, it is further ordered that the defendants or either of them, or other persons acting by, under or through any of them may at any time apply to the judges of this court to restrain the charges and collection thereof.

The conditions of this temporary injunction are that the plaintiff shall execute a bond with sureties to be approved by the district judge of this court in the sum of \$50,000.00, conditioned that they will file with the clerk of this court, on or before the last day of the month succeeding the month in which the collections have been

made, a statement showing the name of every city and town, whether incorporated or unincorporated, and the amount which they have collected for gas furnished to the consumers of domestic gas in said cities or towns whether incorporated or unincorporated in excess of the rates now in force. The report for each of said cities or towns to be separate. It shall also file at the same time a list of all sums collected from the users of industrial gas in excess of the rates heretofore charged, naming said industrial consumers, and pay into the registry of this court all sums thus collected from consumers of domestic and industrial gas in excess of the rates now in force. Said sums to be thus paid into the registry are to be kept there subject to the further orders of this court.

A further condition of the bonds to be that the plaintiff shall keep an accurate list of all persons from whom collections are made under this order with names, addresses and amounts in excess as aforesaid and will produce such information upon order of this court.

182 And the appeal from the temporary injunction against the defendants, The Little Rock Gas & Fuel Company, and The Consumers' Gas Company, is denied, reasons for which will be stated in the opinion of the court when filed.

(Signed)

KIMBROUGH STONE,
U. S. Circuit Judge.

(Signed)

JACOB TRIEBER,
U. S. District Judge.

(Signed)

JOHN C. POLLOCK,
U. S. District Judge.

183 UNITED STATES OF AMERICA,
Eastern District of Arkansas,
Western Division:

Be it remembered, That at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the third day of April Anno Domini, One Thousand, Nine Hundred and Twenty-two at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber Judge presiding and holding said Court, the following proceedings were had, to wit, on July 1st, 1922:

No. 2062.

ARKANSAS NATURAL GAS COMPANY

vs.

ARKANSAS RAILROAD COMMISSION et al.

Comes the plaintiff, by Moore, Smith, Moore & Trieber, Esqs., its attorneys, and presents to the Court its Statement of the Testimony and the Court having examined the cause, and being well and suffi-

ciently advised in the premises, doth approve the same and orders said Statement of the Testimony filed as a part of the record in this cause. And said plaintiff also files its Assignment of Errors and Petition for Appeal to the Supreme Court of the United States, and thereupon on motion of W. B. Smith, Esq., solicitor and counsel for the complainant, it is hereby ordered that an appeal to the Supreme Court of the United States from the order and decree heretofore filed and entered herein be and the same is hereby allowed returnable in thirty days, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to said Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of Five Hundred Dollars.

(Signed)

JACOB TRIEBER,
Judge.

184 Filed Jul. 1, 1922. Sid B. Redding, Clerk, by — —,
D. C.

In the United States District Court for the Western Division of the
Eastern District of Arkansas.

ARKANSAS NATURAL GAS COMPANY, Complainant,
vs.

ARKANSAS RAILROAD COMMISSION et al., Defendants.

Condensed Statement of Testimony.

The following is plaintiff-appellant's condensed statement in narrative form of the testimony introduced upon the trial made in pursuance of Equity Rule 75 (b) and lodged in the Clerk's office for the examination of the defendants as provided by said Rule.

185 C. W. KRAMER, on direct examination, testified:

I came to the Arkansas Natural Gas Company and assumed the duties of Chief Engineer in May, 1916, and served as Chief Engineer until July, 1921, when I became Superintendent of Distribution. As Chief Engineer I looked after the Engineering Department, the designing and details, and laid out the pipe lines, both distribution and main line. Prior to my connection with the Arkansas Company I was with the Engineering Department of the Iroquois Natural Gas Company of Buffalo, N. Y., from July, 1912, to May, 1916, during two years of which period I was engaged in valuation work of the properties of the Iroquois Company. At different times since my connection with the Arkansas Company I have had occasion to make repairs and make changes of installation that necessitated the taking up and the examining of the various items constituting this property, and in pursuit of my duties I have familiarized my self with the physical condition of the property. It has

been the policy of the Company to keep the compressing stations located at Rogers and near Oil City in the best of shape, and all machinery and appliances at the compressing stations are in first class condition; particular attention has been paid to all machinery at our compressing stations. There have been times when it was necessary to run the machinery continuously for many days, and unless it was in the best of condition this could not be done. Beginning the early part of 1920, under my personal supervision, we made a complete inventory of all the physical property of the Arkansas Natural Gas Company located in Louisiana and Arkansas. To do that work I employed experienced inventory engineers that had had three or four years' experience with natural gas companies in the east, and took these engineers into the field and directed them how this work should be done, and we made a complete inventory of all the gas properties in detail, which inventory, including 186 detailed statement of wells producing and dry, operated and reserve gas leases, equipment, right-of-way, compressing stations, transportation lines, telephone lines, real estate and buildings used in operation of the plant and the distribution system, comprising 424 pages, and which said inventory had extended opposite each item the unit cost of reproduction as of January 1, 1922, was filed as an exhibit to the evidence of the said witness C. W. Kramer and witness J. K. Anderson.

I have so arranged the inventory as to make a detailed appraisal as of January 1, 1922, of the reproduction value of each item constituting the property of the Arkansas Natural Gas Company used in conducting its natural gas business.

The level of prices on January 1, 1922, was low as compared with the preceding four or five years. The price of steel pipe as of January 1, 1922, was perhaps the lowest it has been for a great length of time, and it is my opinion the price of pipe will increase during the next six months or two years because of the increased demands. The mills are now selling steel pipe at rock bottom cost in order to keep their mills going and keep their original organization together. I believe that the price of pipe is now as low as during the years of original construction of the plant. The labor costs are much higher than when the plant was constructed. It is my opinion that the labor cost will not decrease from the level used in this appraisal, because in doing this valuation work we put the labor as low as a man can possibly live on. The unit costs of various materials as of January 1, 1922, used by Mr. Anderson and myself in making the appraisal were as follows:

Gas Division.

Unit Cost of Various Materials as of January 1, 1922.

Pipes.

Size.	Weight per ft., lbs.	Price, F. O. B. factory, per foot.	Freight rate, per cwt., on car-load basis.	Freight, per foot.	Cost delivered, per ft.	Labor and teaming.	Total cost, in place.
1/4"	.....	.....	.....	.....	.031	.07	.101
3/8"	.....	.....	.....	.....	.032	.07	.102
1/2"	.....	.....	.....	.....	.043	.07	.113
5/8"	.....	.....	.....	.....	.054	.07	.124
3/4"	.....	.....	.....	.....	.0675	.07	.1375
1"	1.688	.0537	.82	.0138	.0775	.09	.1675
1 1/4"	2.300	.0586	...	.0189	.0775	.10	.1975
1 1/2"	2.748	.0750	...	.0225	.0975	.12	.2760
2"	3.716	.1255	...	.0305	.1560	.12	.3600
2 1/2"	5.881	.1920	...	.0480	.2400	.12	.4350
3"	7.675	.2321	...	.0629	.2950	.20	.5170
4"	10.79	...	...	...	.3170	.20	.5700
4" P. E.	10.96	.2801	...	.0899	.3700	.22	.7300
4 1/2" Sc.	12.742	.4055	...	.1045	.5100	.30	.92
5" Sc.	.....	.....	.....	.....	.62	.25	.7177
6" P. E.	14.64	...	...	...	.4677	.30	.9700
6" Sc.	19.38	.5111	...	.1589	.6700	.35	1.6100
8" Sc.	29.00	1.0222	...	.2378	1.2600	.43	1.7600
10" Sc.	32.00	1.0676	...	.2624	1.3300	...	...

February 23, 1922.

Unit Cost of Various Materials as of January 1, 1922.—Continued.

Size.	Weight per ft., lbs.	Price, F. O. B. factory, per foot.	Freight rate, per cwt., on car- load basis.	Freight, per foot.	Cost delivered, per ft.	Labor and teaming.	Total cost, in place.	
10" P. E.	29.193	.7600	....	.2394	.9994	.40	1.3994
12" P. E.	33.50	.92	....	.2747	1.1947	.38	1.5747
12" Sc.	45.00	1.53	....	.3690	1.8990	.45	2.3490
16" P. E.	42.00	1.17	....	.3444	1.5144	.50	2.0144
16" P. E.	52.00	1.40	....	.4264	1.8264	.55	2.3764
16" Math.	52.00	2.73	....	.4264	3.1564	.65	3.8064
18" P. E.	59.00	2.06	....	.4838	2.5438	.60	3.1438
18" Math.	47.50	2.47	....	.3895	2.8595	.75	3.6095
Cast Iron Pipe.								
Size.	Weight per ft., lbs.	Price, F. O. B. factory, per foot.	Fr. rate, per cwt.	Freight, per ft.	Cost del'd, per ft.	Cost of lay- ing, labor & teaming.	Total cost in place, per ft.	
2"	9.6	.2448	.415	.0427	.2875	.25	.5650	
3"	14.5	.3263	....	.0645	.3908	.30	.7216
4"	19.3	.3763	....	.0859	.4622	.30	.8007
6"	30.3	.5303	....	.1348	.6651	.40	1.1178
8"	42.0	.7350	....	.1869	.9219	.50	1.4903
10"	55.8	.9765	....	.2483	1.2248	.60	1.9074
Line Pipe Collars (Price Delivered).								
1".	1 1/4".	1 1/4".	2".	3".	4".	6".	8".	10".
,13	,21	,26 1/2	,51	,69	,1.28	,3.27	,3.60	,4.80

Dresser Sleeves (Price Delivered).

1".	1½" .	2" .	3" .	4" .	6" .	8" .
1.35	1.40	2.05	2.70	3.05	6.00	9.30

Dresser Couplings, Style 38.

Size.	Weight in lbs., each.	Cost, each, F. O. B. factory.	Freight rate, per cwt., on car- load basis.	Cost of freight, each.	Cost delivered, each.
1½"	...	...	...	...	.75
2"	...	...	...	.20	1.03
4"	...	...	...	.35	1.60
6"	...	...	...	.60	2.46
8"	...	...	...	.70	2.96
10" (5/16)	50.00	2.40	.985	.4925	2.8925
12" (5/16)	58.00	2.75	...	.5713	3.3213
16" (5/16)	82.00	4.29	...	.8077	5.0977
18" (5/16)	91.00	4.78	...	.8963	5.6763

Dresser Matheson Couplings.

Solid Rings.	48.00	3.32	.985	.4728	3.7928
16" (5/16) 18" (5/16)	55.00	4.53	....	.5417	5.0717

Unit Cost of Various Materials as of January 1, 1922.—Continued.

Type 5½ special.		Ludlow Gates, 5½.		Ludlow Gates, #9.	
Size.	Weight in lbs. each.	Cost, each, F. O. B. factory.	Freight rate, per cwt., on car- load basis.	Cost of freight, each.	Cost delivered, each.
2"	30.00	8.80	2.00	.60	9.40
3"	125.00	16.60	...	2.50	19.10
4"	165.00	24.80	...	3.30	28.10
5"	200.00	33.60	...	4.00	37.60
6"	385.00	41.60	...	7.70	49.30
8"	770.00	85.60	...	15.40	101.00
10"	1,035.00	121.60	...	20.70	142.30
12"	1,445.00	169.60	...	28.90	198.50
Test, lbs.		Test, lbs.		Test, lbs.	
2" #8	50.00	11.00	2.00	1.00	12.00
3"	165.00	19.70	...	3.30	23.00
4"	418.00	44.39	...	8.36	52.75
5"	600.00	73.00	...	12.00	85.00
6"	990.00	128.20	...	19.80	148.00
8"	2,120.00	267.60	...	42.40	310.00
10"	2,560.00	323.80	...	51.20	375.00

Size.	Test, lbs.	Weight in lbs., each.	Cost, each, F. O. B. factory.	Freight rate, per cwt., on car- load basis.	Cost of freight, each.	Cost delivered, each.
10" 4P	500	1,100.00	95.00	1.96	21.56	116.56
12"	500	1,400.00	117.80	...	27.44	145.24
16" Grd	500	3,300.00	245.00	...	64.68	309.68
18" "	500	3,700.00	290.00	...	72.52	362.52

Vanstone Nipples.

16"	...	240.00	36.00	1.96	4.70	40.70
18"	...	300.00	42.00	...	5.88	47.88

Standard Weight Gates.

(Price Delivered.)

2"	...	...	...	...	6.00	
3"	...	...	...	...	11.50	
4"	...	...	...	...	26.37	
5"	...	...	...	...	30.00	
6"	...	...	...	...	45.00	
8"	...	...	...	...	50.00	
10"	...	...	...	...	60.00	

Unit Cost of Various Materials as of January 1, 1922.—Continued.

Regulators, Low Pressure.

Size.	Weight in lbs., each.	Cost, each, F. O. B. plant.	Freight rate per cwt.	Cost of frt., each.	Cost each, delivered.
1" Young Fuel.....	50.00	27.00	2.40	1.20	15.00
1"	160.00	54.00	.....	3.84	28.20
2" .....	.....	.....	.....	.....	57.84
3"	370.00	121.50	.....	8.88	78.00
4" .....	.....	.....	.....	.....	130.38
5"	750.00	202.50	.....	18.00	175.44
6" .....	.....	.....	.....	.....	220.50

Regulators, High Pressure.

1"	95.00	27.00	2.40	2.28	29.28
2"	160.00	54.00	.....	3.84	57.84
4"	325.00	121.50	.....	7.80	129.30
6"	625.00	202.50	.....	15.00	217.50
10"	1,165.00	438.75	.....	27.96	466.71
16"	2,900.00	877.50	.....	69.60	947.10

Nipples.
190

Size.	Length, 1" to 3".	Length, 3" to 6".	Length, 6" to 9".	Length, 9" to 12".	Length, 12" to 18".	Length, 18" to 23".
1/4"	.02	.024	.04	.055	.08	.107
3/8"	.02	.024	.04	.055	.08	.107
1/2"	.021	.03	.048	.067	.09	.128

Unit Cost of Various Materials as of January 1, 1922.—Continued.

Crosses.									
Std. Wt.	Std. Wt.	%.	%.	1.	1½".	1½".	2".	4".	6".
500 Test.....	500 Test.....	.09	.12	.15	.24	.30	.42	1.75	4.20
		.27	.30	.32	.41	.55	.69	3.22	7.36
		Stops.							
		1¼".	¾".	1½".	1".	1½".	1½".	2".	
Gas. Wt.	Gas. Wt.	.....	.....	.51	.62	.78	1.02	1.20	1.56
I. B. B. C. Heavy	I. B. B. C. Heavy	.....	.....	.58	.65	.81	1.14	1.47	1.87
Ex. Heavy brass.	Ex. Heavy brass.	.....	.....	.61	.84	.98	1.17	1.64	2.06
		Globe or Needle Valves, Brass.							
Std.	Std. ....	.40	.43	.55	.69	.99	1.38	1.93	2.92
Heavy	Heavy .....	.88	1.00	1.28	1.76	2.22	3.20	4.40	7.00
		Lip Unions.							
		1¼".	¾".	1".	1½".	1½".	2".	4".	
Lip	Lip .....	.17	.29	.34	.46	.68	.91	1.14	5.70
		Flange Unions.							
		1½".	2".	2½".	4".	6".	8".	10".	
Std. Wt. Flange.....	Std. Wt. Flange.....	2.05	2.50	4.00	9.38	15.63	22.50	36.00	
		2.05	3.30	5.30	12.40	20.65	29.50		47.52

		Bushings.								
		$\frac{1}{4}''$.	$\frac{3}{8}''$.	$\frac{1}{2}''$.	$1\frac{1}{4}''$.	$1\frac{1}{2}''$.	$2''$.	$3''$.	$4''$.	$6''$.
500 C. I. ....	.02	.02	.025	.03	.036	.046	.071	.153	.255	.637
193										
		Standard Weight Ells.								
Blk. Mall. ....	.035	.04	.05	.075	.11	.125	.175	.25	.75	1.50
Galv. ....	.045	.055	.07	.10	.16	.20	.30	.45	1.30	2.50
		Street Ells.								
Black Mall. ....	.05	.05	.06	.10	.125	.20	.28	.45	1.13	1.75
Galv. ....	.06	.06	.075	.14	.175	.28	.40	.65	1.75	....
		Ells.								
C. I. Screw.			2''.	4''.	6''.	8''.	10''.	12''.		
Steel 500 Test. ....					.16	.70	1.60	3.95	7.83	11.60
12 Test. ....					.34	1.61	3.68	7.82	12.88	18.40
Flange 1,200 Test Figs. 800 Test.					1.12	4.56	9.92	16.00	24.10	40.00
					3.21	4.80	8.75	12.00	18.90	27.40
		Gate Box Circular Steel.								
2' dia. 2' 4" deep.								Ea.	35.00	
3' dia. 3' 0" "								Ea.	38.00	

Foxboro Orifice Meters Parts & Pressure Gauges.

ARK. NAT. GAS CO. VS. ARK. R. R. COM. ET AL.

Flanges.	F. O. B. Tulsa.	Fr., each.	Cost, del'd.
6"	\$18.25	2.00	20.25
8"	24.50	2.25	26.75
10"	28.75	4.00	32.75
12"	33.00	6.00	42.00
16"	42.00	22.00	64.00
Differential gauge for Type "T" Meter.....	163.87	3.00	166.87
12" Static Gauge for Type "T" Meter.....	44.70	2.00	46.70
10" Static Gauge for Type "T" Meter.....	37.50	2.00	39.50
8" Static Gauge for Type "T" Meter.....	34.15	2.00	36.15
(For 7 day works add \$5.00 to each gauge.)			
Meter Piping and Stand.....	25.00	2.00	27.00
Plates.			
6"	10.00	1.00	11.00
8"	12.50	1.00	13.50
10"	14.00	1.00	15.00
12"	16.00	1.00	17.00
16"	20.00	1.50	21.50

Combination differential and static gauge for Type "T" Meter, 207.00—Deld.

195 Unit costs do not include overhead or supervision, but merely the cost of the material and freight and cost of labor and teams necessary to make the installation, also costs of going over after completion inspecting and repairing work. The prices of pipe and other materials are the mills' quotations based on large quantities of pipe and material to be delivered in large shipments such as required in reproducing the property. Freight rates are based on the rates at points of concentrating the material for constructing the plant.

Witness filed as an exhibit to his evidence the following statement showing detailed summary of reproduction cost and present value as of January 1, 1922, of the natural gas property owned by the Arkansas Natural Gas Company:

Arkansas Natural Gas Company.

*Statement Showing Detail Summary of Reproduction Cost and Present Value as of January 1, 1922, of the
Natural Gas Property Owned by Arkansas Natural Gas Company.*

Production:	Items.	Reproduction cost.	Per cent condition.	Present value.
15 Wells, Oil City Field—Caddo Parish, La.	.....	\$103,200 33	10	\$10,320 03
6 Wells, Elm Grove Field—Caddo Parish, La.	.....	40,956 64	40	16,382 66
10 Wells, Elm Grove Field—Bossier Parish, La.	.....	157,606 70	40	63,042 68
3 Wells, Cedar Grove Field—Caddo Parish, La.	.....	48,331 45	10	4,833 15
1 Well, Bethany Field—Panola County, Texas	.....	8,292 83	100	8,292 83
1 Well, De Soto Field—De Soto Parish, La.	.....	20,901 05	50	10,450 53
3 Wells, Red River Field—De Soto Parish, La.	.....	58,681 97	25	14,670 49
1 Well, Red River Field—Red River Parish, La.	.....	17,992 72	25	4,498 18
Orifice Meters .....	.....	545 74	95	518 45
Real Estate and Buildings.....	.....	17,266 66	95	16,403 33
Pipe, fittings, gates and supplies—Shreveport Warehouse.....	.....	23,650 43	100	23,650 43
Automobiles .....	.....		
Automobiles (Gas Division portion of cars used by Oil and Gas Divisions)	6,472.78		40	4,128 50
Sub-total		10,321 26		..
				177,191 26
				—————
		\$507,747 78		

64 232.17 Acres Unoperated acreage.....	912,229 80	..	912,229 80
5 100.50 Acres Operated acreage.....	228,937 50	..	228,937 50
Total Production	\$1,648,915 08		\$1,318,358 56
<hr/>			
Transportation:			
Right of Way.....	\$94,080 00	100	\$94,080 00
Right of Way Damages.....	70,560 00	100	70,560 00
Rogers Compressing Station.....	421,485 30	90	379,336 77
De Soto Compressing Station.....	229,955 65	90	206,960 09
De Soto Water Station.....	26,987 40	90	24,288 66
Telephone Lines	68,992 70	95	65,543 07
Real Estate and Buildings.....	42,500 00	95	40,375 00
Tools and Equipment.....	12,450 00	85	10,582 50
Pipe, fittings, gates and supplies.....	93,585 79	100	93,585 79
Automobiles	\$2,675.00		
Automobiles (Telephone)	1,996.15		
		4,671 15	40
Orifice Meters (Town Border)	5,968 70	95	1,868 46
Field Gathering Lines.....	97,694 05	75	5,670 27
Main trunk pipe lines to Town Border Gates	4,053,348 32	75	73,270 54
Well Lines	27,200 04	75	3,040,011 24
Additions to Plants since Inventory.....	5,000 00	98	20,400 03
			4,900 00
Total Transportation		\$5,254,479 10	\$4,131,432 42

Statement Showing Detail Summary of Reproduction Cost and Present Value.—Continued.

Distribution:	Items.	Reproduction cost.	Per cent condition.	Present value.
All Distribution Centers	\$598,150 79	80	\$478,520 63	
Tools and Equipment	6,400 00	85	5,440 00	
Loose Material	33,760 02	100	33,760 02	
Office Equipment	18,454 50	90	16,609 05	
Meters at all Plants and in Stock	140,130 95	95	133,124 40	
Orifice Meters	1,352 78	95	1,285 14	
Real Estate and Buildings	23,850 00	90	21,465 00	
Automobiles	9,063 36	40	3,625 34	
Additions to Plants since Inventory	18,000 00	98	17,640 00	
Total Distribution	<u>\$849,162 40</u>		<u>\$711,469 58</u>	
Grand Total Production, Transportation and Distribution . . .	\$7,752,556 58		\$6,161,260 56	
Preliminary Engineering, Organization and Promoters' Expenses	2%	155,051 13	..	123,225 21
Engineering and Administration during Construction	5%	387,627 83	..	308,063 03
Legal Expenses during construction	0.5%	38,762 78	..	30,806 30
Liability Insurance, Injuries and Taxes during construction	2 1/2 %	193,813 91	..	154,031 51
Omissions from Inventories	1%	77,525 57	..	61,612 61
Contingencies during construction	4%	310,102 26	..	246,450 42
Sub-total				<u>\$7,985,449 64</u>

Interest during construction	4 1/2 %	401,194 80	..	318,845 23
Sub-total.....	.....	\$9,316,634 86		
Working Capital—Production	\$165,000.00			
Distribution	30,000.00			
Transportation	55,000.00			
	.....	250,000 00	..	250,000 00
Going Concern Value.....	.....	750,000 00	..	750,000 00
Total Value for Rate Making Purposes.....	.....	\$10,316,634 86		\$8,404,294 87

197 The bare reproduction cost or the physical cost of the property as of January 1, 1922, was \$7,752,556.58. Based on my knowledge of the condition of the plant from my six years' service in connection with the maintenance, repairing and operation of said plant I have applied physical depreciation to all parts of the system and according to my best judgment the fair depreciated value of the property, excluding all overhead, interest during construction, and excluding going value and working capital as of January 1, 1922, was \$6,161,260.56. The physical condition of our stations (compressing plants) which determines the ability of our stations to function and give the regular service, necessitates our keeping it in 95% condition, but to be fair I have put it at 90%. We have allowed 75% condition for main trunk pipe lines to the town border gates, but it is my opinion that our main transportation system is around 80 or 85 per cent condition. Am basing this on experience at various places where our line has been dug up. Last June or July we took up some pipe down near Perla to put in some meters, and we found Dresser Coupler Rubbers in such shape that we could reuse them. The pipe was in such good condition that it looked like it had just come out of the mill. The mill scale was still on the outside of the pipe. The pipe down below Hope, where there was a recent blow-out, was found to be in good shape. The blow-out was not caused by defects in pipe but the sliding of a hill side. We have uncovered pipe at various points and in the majority of cases we found everything in good shape. Of course there was or are some local spots where the acid condition of the earth makes a difference. Sulphur River is one of these spots, but we have had replacements made at those places. The line was rebuilt across the Sulphur River.

I have fixed the present condition of distribution plants at 80 per cent. During the past 18 months we have had a repair gang 198 on the road going from one place to another, overhauling, digging up and repairing these plants. We find the condition of our line taken as a whole everywhere excellent. Of course there are some few local spots in the plant, but as a whole it is very high. We have given special attention to the repair of distribution plants in order to cut down leakage. Mr. J. K. Anderson assisted me in making these valuations. The valuations were the result of joint consultations. Mr. Anderson and myself have made computations as to the various items of overhead and this is shown in the summary detail. We have allocated our computations as to overhead, working capital and going concern value separately to the property devoted to production, transportation and distribution. For the three combined we have allowed \$250,000 for working capital, and \$750,000 for going concern value, including the overhead interest during construction, working capital and going concern value we find the reproduction cost of the plant as of January 1, 1922, to be \$10,316,634.86. We have fixed the present fair value of the property as an operating and going concern at \$8,404,294.87.

In my opinion the functional capacity of the plant and physical property is in better shape today than it was at the time the plant was constructed. The reason for this is that during the past five

or six years we have been eliminating the weak spots in our construction.

The question of salvage is more or less a question of opinion. I have considered this matter carefully and in my opinion the salvage value of this property is around \$630,000, and although it is hard to be a prophet, looking at the past history and looking into the future as far as we can, I do not believe five years from now there will be much of a change if any in the salvage value for the reason
199 that we must maintain the integrity of the property in order to give good service.

Attached to the inventory and appraisal filed as an exhibit to my evidence is a comprehensive statement made by Mr. Anderson and myself of the basis of valuation of the property of the Gas Division of the Arkansas Natural Gas Company, of the things taken into consideration in fixing the overhead charges, and in determining the amount to be added to the physical value for going concern value and operating capital, which is as follows:

200

EXHIBIT C TO KRAMER.

Valuation of Property of Arkansas Natural Gas Company, Gas Division, as of January 1st, 1922.

Various methods of determining the value of public service properties have been approved by the courts and by Public Service Commissions. We have adopted that method which consists in first estimating the cost to "Reproduce New" every feature of the existing property. We have then assigned the "Per cent Condition" of the different classes of property in order to determine its "Present Value." Those portions of the property that have been subject to appreciation in value have merely been given their present value, which naturally includes such increment.

In estimating "Reproduction Value New" we have conceived the creation of a property exactly similar in every respect to the property of the Arkansas Natural Gas Company as it existed as of January 1st, 1922, and have endeavored to estimate the cost of such creation under those present-day conditions that affect material and labor costs. Due consideration has been taken of fluctuating prices and of unusual circumstances.

By the term "property," as herein used, we mean "that which is owned; that to which the company has a legal title; the exclusive right to possession, including all the rights which accompany ownership and is its incident." Such definition involves all tangible and intangible property to which your company has a legal title. It includes bare physical property, overhead expense during construction, value of leaseholds and going value and working capital.

When conceiving the creation of this property under the above interpretation of the word, we must be careful to start with the original conception that has since developed into the present plant and

business. Some individual must first conceive the necessity for the use of and means of developing a natural gas supply and economically distributing the same. This is the promoter. The promoter takes no small part in the creation of a business of this kind. He must not only possess unusual foresight and originality to conceive his project, but also the even rarer ability to bring his conception to a concrete issue. If he has confidence in his plans, his next step in the process of creating such a property would consist in bringing his project before able financial interests and in inducing them to create an organization for its development. This step being accomplished active construction of the physical property would begin. This would mean the acquirement of leaseholds, real estate and rights-of-way; preparation of general plans for the construction of the property; engineering and supervision of construction; securing customers; perfecting an operating organization, and in general building a complete operating property as it exists at the present time. So, after an estimated period of years, we would finally arrive at an active going concern directly and indirectly delivering natural gas to approximately 24,000 customers and selling upwards of 7,000,000 thousand cubic feet of gas per year. This involves the creation of a thoroughly efficient business organization, similar to the one in existence, to conduct the affairs of the company and maintain an active service to its customers.

202 We have therefore endeavored to include in our valuation all the various elements of value involved in the above analysis.

203

Inventory.

This Inventory has been classified under the following general accounts:

Production,
Transportation,
Distribution.

"Production" includes all leases, gas wells, casing, rigs and fittings, orifice meters, certain real estate and buildings, pipe and other fittings, automobiles and trucks devoted to the production of natural gas.

"Transportation" covers all high pressure pipe lines, rights-of-way therefor, compressor stations, telephone lines, real estate and buildings, tools and equipment, pipes and other fittings, automobiles, orifice meters and gathering lines from wells to the main line or to the compressing stations, and the actual cost of additions to plant since date of inventory.

"Distribution" includes all distributing mains and services in cities, towns and villages, necessary tools and equipment, pipe and fittings, office equipment, meters at all plants and in stock, orifice meters, real estate and buildings, and automobiles used in the distribution of natural gas to the consumers at low pressure, and the actual cost of additions to plant since date of inventory.

This inventory was made under the direct personal charge of

204 Mr. C. W. Kramer, then Chief Engineer of the Arkansas Natural Gas Company, who employed experienced men for these special purposes, listing by taxing districts in the various parishes of Louisiana and counties of Arkansas, every piece of tangible property of the company by actual measurement and inspection. Wherever records of equipment were available these were carefully checked with the data obtained, so that it is believed this inventory represents as true and correct an inventory as can be reasonably made.

After the inventory of physical property had been listed unit prices were applied and extensions made to indicate the total structural value of the property. To this have been added various items of overhead expense representing cost of executive management during construction, probable omissions from inventory, probable contingencies during construction, legal and organization expenses, promotion and preliminary engineering and legal expenses, interest during construction and various other items as shown in detail under the proper headings.

Leasehold values, cost of developing business and organization have been evaluated in accordance with explanations appearing elsewhere.

205 Present Value of Property.

Instead of assuming a certain length of life for different parts of the plant and applying a percentage depreciation, we have assumed, a percentage condition of the original cost to reproduce this property at the present time as being a proper method for determining its present value for rate-making purposes.

206 Unit Costs.

After the various property elements had been inventoried and listed, certain unit costs were applied. These unit costs include the cost of the item at the point of production; freight charges to point of delivery, transportation to point of installation and all labor charges connected with such installation.

Standard quotations of the leading manufacturers of the various classifications of equipment were used. It was believed that while there might possibly be a slight reduction in the price of labor during this year, yet it was believed that the price of pipe and materials and machinery constituting the greater part of the value of this property would not go any lower but, on the contrary, would increase in value for the next five years, and that using the value as of January 1st, 1922, was in effect using the lowest prices which would obtain for many years to come.

The prices assigned for labor and teaming are designed to cover all teaming and hauling to deliver material to the point of installation, as well as all labor involved in the active installation.

207

Overhead Charges.

After unit costs had been applied to the physical inventory, extensions made and totals derived, the result represented the value of the bare physical parts of the property. Every engineer or any official connected with the promotion, development and construction of a utility knows that the sum of each item of cost does not represent the total value of the property. There are large items of expense involved in the construction of an undertaking of this character that do not appear under unit costs; consequently it becomes necessary in an estimate of the value of the property to include such items under a general percentage charge known as overhead charges or overhead expense.

These overhead charges, when analyzed in detail, will be found to consist of a number of items that would ordinarily be overlooked by one unfamiliar with the growth and construction of such a property. They consist of the following items:

- Preliminary Engineering, Organization and Promoter's Expense;
- Engineering and Administration during Construction;
- Legal Expenses during Construction;
- Liability Insurance and Injuries, and Taxes during Construction;
- Interest during Construction;
- Omissions from Inventory,
- Contingencies during Construction.

208 209 Preliminary Engineering, Organization and Promoter's Expense.

As outlined in the previous discussion, the total value of an operating public utility property must necessarily involve the value of the services of the original promoter who conceived the idea of building the property. It has been necessary for him to employ engineers, geologists, attorneys and other investigators to report on the various engineering, geological, legal and commercial features connected with the proposed development. The engineering and geological expense would include salaries, living and traveling expenses of the engineers and geologists engaged in the preparation of the preliminary plans and reports. Legal expenses would consist of fees for securing options, examining titles, preparing drafts of franchises and charters, and making all necessary legal arrangements and provisions to show that the property is of value and can be properly promoted.

210 Engineering and Administration During Construction.

After the promoter has been successful in launching his enterprise and has induced capitalists to undertake the financing of the same, it will be necessary for the newly formed company to secure additional expert engineering and geological advice with regard to the development of the project and competent engineers and

geologists to take charge of the actual construction and acquisition of gas territory. These engineers and geologists will go over preliminary reports and statistical data; prepare final estimates, plans and detailed specifications; supervise the closing of contracts for the purchase of equipment and gas leases and lands, superintend and inspect the construction of the work as it progresses; prepare frequent progress reports on the condition of the work; make changes in plans and designs necessitated by unexpected development; certify payments on account contractors, and in general assume responsibility for the innumerable details which require attention during the construction period. Engineering as here defined includes administration of the work, cost accounting, time clerks, office supplies, etc.

211 Legal Expense During Construction.

The legal expenses incident to the construction period include the services of attorneys in connection with closing of contracts for the purchase of equipment; examining of abstracts of titles for the purchase of land and securing of leases; obtaining rights-of-way; preparation of all necessary papers in connection with the issue of the various securities to cover the construction work as it progresses; conducting various litigation proceedings that must necessarily exist in such a large undertaking, and in fact a vast amount of expensive legal detail which is known only to those who have been interested in the development of public utility properties.

212 Liability Insurance and Injuries and Taxes During Construction.

In creating a property of this magnitude it is necessary for the company to acquire lands and leaseholds far in advance of the time when they are actually required or before the nature of the project becomes generally known to the public. Were this not done, exorbitant prices would be demanded for these various elements of the property. It is also necessary to do this in order to avoid unforeseen obstacles that may block the progress of construction. For this reason the company must pay taxes on the lands and interest on the money necessarily required for the purchase and control of these elements. These charges will continue from the beginning of the first purchase to such time as the property may be established on an earning basis. In order to protect itself the company must carry, during the progress of construction, fire insurance on all destructible property, and liability insurance against damage resulting from injuries to employees and to the public in consequence of accidents. It is not possible for the construction of a property of this magnitude to proceed to completion without many accidents, all of which mean material expense to the company in the form of legal services, cash settlements, and medical or hospital services to the injured parties.

Interest During Construction.

As a part of the re-creating of this property on a "Reproduction New" basis, we must conceive of some method of financing the project. Under present-day methods of financing utilities of this character, it is probable that a long-term bond and stock issue would be created to provide the necessary funds for construction. Inasmuch as there would be no physical property to protect these bonds until after the construction period, they would not be a negotiable security until such time as the work would be completed. It would therefore be necessary to issue short-term notes to provide the necessary cash for actual construction, the bonds and stock being held as collateral for the notes. The bonds would probably bear interest between 5 and 6 per cent., while the notes would probably bear interest at a rate of not less than 6 per cent., and in addition might have to be disposed of at a discount.

The notes to cover construction would probably be sold to parties having a direct interest in the project, who would have sufficient confidence in its possibilities to supply the funds. They must be responsible people and able to supply the money as needed. Hence no interest would be charged against the funds excepting as actually used in the creation of the property.

214 The construction period of such property, involving expenditures of approximately ten million dollars would probably be not less than two years, depending upon circumstances. Thus the average interest bearing period involved, assuming that the expenditures were made uniformly throughout the time of construction, would probably be one year. The total net interest charges during this period, after deducting reasonable bank interest on money raised before it was required and held on account, would be not less than six per cent., on the total structural cost of the property.

However, it is possible that during the last six months of the two year construction period certain portions of the property would be established upon an earning basis, consequently we have based our allowance for interest during construction for the entire property upon an average interest-bearing period of nine months. The annual rate has been taken as six per cent., which we believe to be very reasonable, making the total allowance for interest during construction 4½ per cent. of the total structural cost of the property.

Contingencies During Construction.

Large contingent expenses will necessarily be incurred in constructing work of this kind. They occur from many causes, among which are the failure of contractors and the legal expenses incident thereto; delay of work caused by failure of contractors; inability to secure finances when expected; injunctions against the progress of construction, and legal expenses incident thereto; inability to obtain possession of land when it is expected and required; stringencies in the money market, causing temporary suspension of the work, while

large interest and other overhead charges must be met; consequent disorganization of the force and reorganization at time work is resumed; river crossing, floods and continuous high waters; the necessity of rebuilding parts of the work which have failed because of improper design or other unforeseen causes; the great and unusual expenses and losses sometimes incurred at difficult river crossings by reason of floods and washouts and long continued high waters; protracted strikes; cost of unforeseen prospecting expenses not otherwise provided for in the estimates.

Such contingencies invariably occur and must be taken into consideration in preparing an evaluation. There is no method 216 of computing the cost of such contingencies except by adding a percentage of the original construction cost that will represent such amount.

217 Omissions from Inventory.

There is no such thing as a perfect inventory. It is impossible to include every item constituting the property. We inventory only those things which we can see and things regarding which we can secure authentic information from records of the company. There will always be omissions. Concealed items in a property of this magnitude are numerous and authentic records are scarce. Here we have a property consisting of many miles of pipe lines laid over a very large territory and with a large percentage of the mechanical equipment concealed under ground or water. Under such conditions one can readily perceive how humanly difficult it is for all items of the property to be inventoried and for no omissions to occur. It therefore becomes necessary to provide a percentage item to cover such omissions.

218 Application of Overhead Charges.

The following statement tabulates the percentages which have been applied to cover the various overhead charges discussed above. The percentages applied opposite each item are the arbitrary allowances which in our judgment should be provided to cover these various charges, after taking due consideration of the theory upon which the reproduction value of this property has been estimated.

Preliminary engineering, organization and promotion expenses. 2%

(The percentage assigned applies to all items of wells, orifice meters; real estate and buildings, pipe and fittings, automobiles and leases operated and un-operated; gas purchasing meters, measuring stations, compressing stations, high-pressure transportation mains, distribution mains and control valves, services, regulators, meters, miscellaneous buildings and shops, telephone lines and water supply systems.)

Engineering and administration during construction..... 5%

(Percentage assigned applies to all the items mentioned under preliminary engineering organization and promotion expenses.)

Legal expenses during construction..... $\frac{1}{2}$ of 1%

(Percentage assigned applies to all the items outlined in the previous headings.)

Liability insurance, injuries and taxes during construction.. $2\frac{1}{2}\%$

(Percentage assigned applies to all structural costs as outlined above and other items.)

219 Omissions from inventory..... 1%

(Percentage assigned applies to all items inventoried, including lease-holds.)

Contingencies during construction..... 4%

(Percentage assigned applies to items outlined under preliminary engineering, organization and promotion expenses.)

Interest during construction..... $4\frac{1}{2}\%$

(Percentage assigned applies to all items, including allowances for preliminary engineering, organization and promotion expenses; engineering and administration during construction; legal expenses during construction; liability insurance, injuries and taxes during construction; omissions from inventory and contingencies during construction.)

220 Going Concern Value.

It is everywhere recognized by the decisions of courts and commissions that a public utility system with business attached has a greater value than the bare physical property of that system without the business attached. The business is not gotten by the mere act of installing a system. It is only acquired by effort and endeavor. The owner of the system must either spend new money to develop his business, or else lose proportionate interest on his investment for a long period of time.

If the facts in the early history of natural gas utilities could be collected, that plant which had made money from the beginning of its activities would be found to be a rare exception. Wherever the present public utility commissions have investigated the facts regarding the early operations of various public utility companies, they have found in general early losses amounting to a large percentage of the cost of the physical properties.

A plant or system without customers is a plant or system without earnings. When these necessary customers are secured, the system becomes a living thing that business men who know value will buy and for which they will pay a price in excess of the value of the physical property. They would not pay a price for the system as a going concern greater than the value of the physical properties of that system if this additional value did not exist. As practical men they know that a business must be developed in order that a fair return of interest may be earned upon the

221

money invested in the physical property. They know that it will cost additional capital to develop it and secure customers. It is for this reason they are willing to pay a considerable increment over the bare value of the physical plant when the necessary business has already been developed for it.

The business which exists at present did not just grow; it took the money of the company to develop it in advertising, in educating the public, canvassing and experimenting. This money, if it had not been put into the development of the business, could have been used to pay dividends, or to make extensions or betterments, or to meet operating expenses which in the early years often came directly out of the pockets of the stockholders. The development of this business has taken the best thought of the managers of the company. They have been constantly on the lookout to secure business by encouraging the use of natural gas in the various industries that could economically use it, and it would seem to be fair that these successful pioneers should be permitted to capitalize the expenditures which became necessary to accomplish this result, and to profit by the economies which their ability and energy have produced.

In the construction of these natural gas properties and the 222 development of their attached business, it is inevitable that there should be a period after the construction of the physical property when the expenses, including interest and depreciation, will be in excess of the revenue. Therefore, a reasonable amount should be added for that value of the tangible properties upon which a fair return may be earned, to allow for the value of the developed business and to compensate the company for its expenditures to create this business and the losses entailed during the early stages of its development.

Various decisions of the Public Service Commissions and the courts have allowed from ten to thirty per cent, for going value.

The going value of a large plant serving many communities and having numerous sources of gas supply would be much greater than that of a number of smaller utilities serving the different communities.

In the case of natural gas companies the prospective user is frequently called upon to make an investment which will enable him to use the gas, and has no positive assurance that the service which he is about to take will be continuous and that he may not have to abandon his investment in order to use coal, artificial gas, electricity or some other form of service. For this reason the natural gas company, when entering a new field, has more difficulty, and consequently more expense, in obtaining customers than would public

223 utility properties such as water, electric light and power, telephone or artificial gas properties, all of which represent permanent, well-established lines of business not dependent upon an indefinite source of supply for the commodity which they offer to the public.

In view of the foregoing consideration, we feel that an allowance of \$750,000.00 going value for the entire property is proper.

224

Working Capital.

It was necessary to have certain funds in the conduct of drilling operations to provide for purchase of materials and payment of labor in the drilling of wells, and to provide for unforeseen contingencies and accidents, and in the present instance it is deemed proper to allow \$165,000.00 for such use.

In the conduct of the business of transportation it was necessary to have funds for the purchase of various materials and spare parts of machinery, as well as to meet the ordinary pay-rolls, and to provide for unforeseen contingencies and accidents, and in the present instance it is deemed proper to allow \$55,000.00 for such use.

In the matter of distribution of natural gas it is necessary to have certain funds to purchase materials and supplies used in the extension of the distribution system and in the measuring of the gas, as well as to meet payrolls and to provide for unforeseen contingencies and accidents, and in the present instance it is deemed proper to allow \$30,000.00 for such use.

225 The leakage in the Little Rock plant for the year 1920 was 732,397,000 cubic feet; for the year 1921, 834,209,000 cubic feet. We turned that much gas into the Little Rock system over and above what they accounted for. The total sales of gas by the Little Rock Company for the year 1920 was 3,934,988,000 cubic feet, and for the year 1921 it was 3,052,860,000 cubic feet. To get the amount delivered to the Little Rock Gas & Fuel Company there should be added the leakage for each of said years. We do not calculate leakage on a percentage of total deliveries to distributing companies but on per mile of pipe. Converting the Little Rock plant into the equivalent of a 3 inch line the leakage for the year 1920 per mile of equivalent 3 inch main was 3,143,000 cubic feet. We consider good practise to be 200,000 cubic feet per mile of equivalent 3 inch main. For 1921 the leakage per mile of equivalent 3 inch main was 3,580,000 cubic feet. In 1920 the unaccounted for gas in Little Rock was 15 times what it should have been, or good practise. In 1921 it was 17 times what it should have been, or good practise. Leakage at Hot Springs for the year 1920 was 114,646,000 cubic feet; for 1921, 158,816,000 cubic feet. We are unable to get the exact mileage in Hot Springs and are therefore unable to state what the leakage is there measured per mile of equivalent 3 inch main. The number of cubic feet of gas accounted for in Hot Springs for the year 1920 was 1,039,577,000 cubic feet; for 1921 the gas accounted for at Hot Springs was 1,101,757,000 cubic feet. For the year 1921 the total leakage of the Arkansas Natural Gas Company's distributing plants, excluding Little Rock and Hot Springs served by separate distributing companies was 291,643,000 cubic feet. The total gas accounted for in the Arkansas Natural Gas Company's distributing plants for 1921 was 1,899,494,000 cubic feet. Adding the leakage just given and we have the 226 total amount of gas delivered into the Arkansas Company's distributing plants for the year 1921 of 2,151,835,000 cubic feet, on which there was a leakage of 291,643,000 cubic feet, or a

percentage of a little over 10 per cent, while the leakage in the Little Rock and Hot Springs plants ran over 20 per cent.

The leakage at the Pine Bluff plant operated by the Arkansas Company for the year 1920 was 176,249,000 cubic feet. For the year 1921 it was 123,416,000 cubic feet. For the year 1920 the loss per mile of equivalent 3 inch main at Pine Bluff was 2,582,000 cubic feet; in 1921 the leakage per mile of equivalent 3 inch main at Pine Bluff was 1,808,000 cubic feet, or 9.4 times more than good practise. The leakage for 1920 was 12.90 times more than good practise, while the leakage at Little Rock for 1920 was 15.72 times more than good practise, and for 1921, 17.90 times more than good practise. The gas accounted for at Pine Bluff for the year 1921 was 929,978,000 cubic feet. The total gas delivered to the distributing system at Pine Bluff for 1921 was 1,053,394,000 cubic feet, the difference of 123,416,000 cubic feet being the leakage, which shows the Pine Bluff plant leakage is only about 10 per cent of the deliveries, while the leakage at the Little Rock and Hot Springs plants runs over 20 per cent.

The main pipeline from the fields in Louisiana to Little Rock crosses six rivers. There are nine separate pipes across the Red River that can be used in the event there is a break in the line and four across Sulphur River. In making the valuation of the plant we did not add anything for labor costs by reason of the construction across the rivers, but treated it as a straight line mileage, the same as pipe laid in trenches. The main line mileage of the Arkansas Company's line, including the two branches, one from Perla to Pine Bluff, the other from Perla to Hot Springs, is 294 miles of 227 transportation line.

Cross-examination:

The Company is obtaining a little gas from the Caddo field now, but it is insignificant according to our total requirements. We are getting none from the De Soto field. The valuation of acreage on the appraisal is not priced at its cost, but on what money it would take to go today and get this property, and it would be impossible to get this property today at the money we got it. The acreage appearing in the appraisal in Bienville, Bossier, Caddo, De Soto, Grant, Morehouse, Natchezoches, Ouachita, Red River, Sabine, Union and Webster parishes in Louisiana, and in Arkansas, Ashley, Bradley, Calhoun, Clark, Cleburne, Cleveland, Columbia, Dallas, Drew, Grant, Hempstead, La Fayette, Lonoke, Nevada, Pike, Pulaski, Sevier, Union and White counties in Arkansas, is merely protective gas acreage. We value the unoperated acreage in Arkansas and Louisiana at \$912,229.80 and the operated acreage in Louisiana at \$228,937.50. The company's main transportation main from De Soto to Little Rock is comprised of 16 and 18 inch pipes. There is some 16 inch pipe and some 10 inch pipe in the river crossings, but the total of the small sizes as compared to the aggregate is very small. It is all steel pipe. Our main transportation system is practically all steel, but in our distribution plant at Pine Bluff we have some cast iron pipe. That was there at the time we acquired the plant.

The life of a steel pipeline has never been determined to any degree of certainty. Engineers are divided in opinion. Some engineers give it a life of 20 to 25 years, some 50 years. Bilshley & Co. of the Hope Gas Company give it a life of 50 years. Not to my knowledge do engineers accept 25 years as the life of steel pipe. Steel pipe is used because it is cheaper in original construction and easier to keep the leakage down. Cast iron pipe is heavier and freight is more and it takes more men to handle it. I was not with the Company when the line was built, but it was constructed in the early part of 1910 and completed in 1911 and 1912 and has had a life of 11 or 12 years. I depreciated it only 25 per cent because a major portion of this property, from an examination of the pipe, is found in good condition. We used the De Soto compressing station in the Summer months when the demands are light to pick up the low pressure gas in the Oil City field and put it in our line, but we get very little gas from that field and it is practically exhausted. When it is exhausted we will have to move the De Soto compressing station, more than likely, to a new field. Cost of moving would depend upon what we move and where we move it, the distance, etc.

We figured right-of-way damages at \$70,560.00, based on the amount of land cultivated, the amount of crop land we have to pass through. I do not know what it cost at the time we acquired it. I know from experience damages are very heavy. Figuring the cost of pipe, we have our prices as low or lower than the pre-war period of five years.

Redirect examination:

'We had test prices of the cost of laying pipe as of January 1, 1922, at the time we made up the cost of teaming and ditching on basis of labor cost per lineal foot. The Reserve Natural Gas Company was engaged in building a 16 inch line from their present line to the Bethany field, and we took the common labor prices on that line, teaming, hauling and freight; and hauling that pipe out from the railroad station, putting it in and covering the pipe was 50 cents a lineal foot. We checked up the prices that were being paid by the Reserve Natural Gas Company and were advised that the contractor

was not making any money. We used his prices as a basis
229 There was no better record to determine the actual cost than the cost to the Reserve Company. In the unoperated acreage the Company owns 2,834.60 acres in Harrison County, Texas, which we have valued at \$15.00 per acre, and it owns 5,489.53 acres in Panola County, Texas, which we value at \$100.00 per acre. The total valuation in these two counties being \$591,472.00. Harrison County is just north of Panola County, both being on the east border of Texas, and the acreage is within the Bethany field. It is the consensus of opinion that that part of the Bethany field in Harrison County will not be much of a field, while the acreage in Panola County is in the heart of the field. The field is now developed by other companies and has been proven to be a gas field of very large proportions. The Reserve Company is now constructing a pipe line

to the South Bethany field; that is the line which is referred to from which we obtained construction costs. These matters were taken into consideration in fixing the valuation of the acreage in Panola County. It is my opinion that the acreage in Panola County could not now be secured at \$100.00 per acre or at all. If the Arkansas Company continues the supply of gas to Arkansas it will be necessary to drill additional wells in the Bossier field just east of Red River. In Webster Parish, Louisiana, we have a value of \$50.00 per acre on 1,506 acres owned by the company, while in another parish in Louisiana our valuation runs only from \$1.00 to \$10.00, because the developments in Webster Parish indicate it will be a large gas field, and in my opinion the acreage could not now be obtained there at that price. The acreage in Caddo Parish, which is carried at \$15.00 per acre, is that acreage located in the Elm Grove field just across the river from the wells in Bossier Parish and is not the acreage in the Caddo and Vivian fields in the northern part of the Caddo Parish.

We value unoperated acreage in Morehouse Parish at \$10.00
230 an acre. It is where the Monroe field is developed. In valuing the unoperated acreage in these various parishes we have done so with reference to present conditions and the ability to go in there and buy acreage at this time. The highest prices on Arkansas acreage is in Bradley, Ouachita and Union counties; in Bradley and Ouachita it is valued at \$5.00 per acre, while in Union it is valued at \$7.50. In these counties there is considerable wildecatting going on which gives it a higher price, as there is a possibility of gas wells being brought in in those counties. Acreage is more valuable where there is a wildcat well than it is where there is no drilling. In valuing the operated acreage in the Elm Grove field in Bossier Parish at \$75.00 per acre we were governed by the amount of gas remaining in the ground, at what we would have to pay for that acreage and to get it out and the market conditions. Seventy-five dollars an acre on that acreage is a nominal value and is low. The operated acreage in Cross Lake, Cedar Grove and De Sota are all put in at \$25.00 an acre. That is because the gas is going out. Operated acreage in Bethany field is placed at \$100.00 an acre. We have brought in a well there and capped it.

Recross-examination:

No oil leases are included in the list of acreage carried into the inventory. The leases covered oil as well as gas. They are usually taken for both. There has been some development for oil in Panola County, Texas, and over eastward I understand there is an oil producer. I guess there has been a few small oil wells in Harrison County. We are carrying oil leases in Ouachita and Union Counties, Arkansas, and also some gas leases. I asked the Land Department to furnish me for my appraisal only with a list of the leases held for
231 gas. Allocation of leases between the gas department and the oil department is left to the decision of the management for the purposes for which they take the lease. The location of the lease has a good deal to do with it whether it is an oil or gas lease. They would not take an oil lease in the Bethany field, and in

the field around El Dorado, Arkansas, they would not attempt to take a gas lease. As to what they would do in a virgin field would depend upon the report of the geologists, whether they thought it was a gas or oil field. I do not know what the oil acreage is.

232 Cross-examination:

I mean by leakage unaccounted for gas. That is, the difference between the volume of gas that the meters of the Arkansas Natural Gas Company show were delivered into the city gate line and the gas accounted for according to the meters of the consumers of the distributing companies. If I translated the leakage into percentages, 200,000 cubic feet per mile of three inch main might or might not be down as low as one or two per cent. The gas company that has a leakage of eight or ten per cent of their sales is fairly good practice.

We use at the city gates a Toxhoro orifice meter, which consists of a flange in a straight line of pipe on each side of the flange. A plate with a known diameter is inserted in the flange. The top of the flange on each side of the inserted orifice plate is tapped at a given distance so that the pressure on one side of the plate can be recorded on a static gauge and the difference in pressure on both sides of the plate can be recorded on a differential gauge. From the records thus obtained, the amount of gas thus passing the meter can be calculated. This meter makes a record on a chart and we make the calculations from the chart. The Little Rock Gas & Fuel Company has no such meter nor any meter at the city gate, and it has no means of knowing the amount of leakage except from the information it gets from the Arkansas Natural Gas Company.

All gas companies have started in the last few years to pay a great deal of attention to the subject of leakage. One of the reasons being that the gas has increased in value.

I cannot say definitely that the attention of the Little Rock Gas & Fuel Company was ever called to the amount of leakage in its plant prior to the hearing before the Commission.

Beginning 1916 we worked up the amount of gas we were 233 delivering and the only reports from the Arkansas Natural Gas Company to the Little Rock Gas & Fuel Company that I can vouch for as having been given were reports Mr. Booth asked mailed to him three or four months ago. I believe that Mr. Booth is endeavoring to decrease his leakage.

234 E. J. COLE, on direct examination testified:

I am the Comptroller of the Arkansas Natural Gas Company and since 1915 have been the Auditor of that Company in charge of its accounts. I went with the Company in 1909, at the time it began construction of its line in Arkansas, and during all that time have been engaged in auditing and in charge of its accounts. I have made up a list of exhibits for the Court on this hearing, which are as follows:

Arkansas Natural Gas Company.

Comparative Statement Earnings and Expense, Gas Department.

ARK. NAT. GAS CO. VS. ARK. R. R. COM. ET AL.

	12 months ended December 31.		Increase or decrease.
	1921.	1920.	
Earnings:			
Domestic Gas Sales	\$997,895.88	\$1,054,133.85	[\$56,237.97]*
Surplus Gas Sales	637,842.48	1,111,116.43	[473,273.95]*
Field Gas Sales	105,088.60	156,109.24	[51,020.64]*
Total from Gas Sales	<u>\$1,740,826.96</u>	<u>\$2,321,359.52</u>	<u>[\$580,532.56]*</u>
 Expense:			
Gas Purchased	\$398,825.35	\$594,419.53	[\$195,594.18]*
 Prospecting & Lease Expense:			
Leasing & Paying Rentals	\$10,278.40	\$32,986.94	[\$22,708.54]*
Lease Rentals	64,950.10	144,798.83	[79,848.73]*
Office Expense	7,096.03	9,219.15	[2,123.12]*
Total	<u>\$82,324.53</u>	<u>\$187,004.92</u>	<u>[\$104,680.39]*</u>

[*Red in copy.]

Comparative Statement Earnings and Expense.—Continued.

	12 months ended December 31.		Increase or decrease.
	1921.	1920.	
Production Expense:			
Operating Wells & Lines.....	\$32,785.00	\$68,395.96	[\$35,610.96]*
Repairing Wells & Lines.....	11,740.85	9,763.92	1,976.93
Well Rentals.....	10,264.86	10,466.90	[202.04]*
Drilling Wells.....	41,561.85	177,168.84	[135,606.99]*
Total	\$96,352.56	\$265,795.62	[\$169,443.06]*
Transportation Expense:			
Main Line.....	\$52,708.70	\$74,147.68	[\$21,358.98]*
Hot Springs Line.....	2,573.45	2,868.21	[294.76]*
Pine Bluff Line.....	8,145.01	5,219.22	2,925.79
Field Lines	1,264.30	1,693.42	[429.12]*
Total Lines.....	\$64,691.46	\$83,928.53	[19,157.07]*
Telephone Lines.....	17,784.34	16,898.54	[885.80]*
Compressing Stations.....	127,782.80	142,451.06	[14,668.26]*
Total	\$210,258.60	\$243,278.13	[\$33,019.53]*
Distribution Expense:			
Pine Bluff District.....	\$27,167.98	\$23,583.55	\$3,584.43
Sheridan District.....	1,520.02	1,986.72	[466.70]*

Benton District.....	5,657.19	8,275.29	[2,621.10]*
Malvern District.....	7,066.10	4,179.41	[2,886.69]
Arkadelphia District.....	6,917.01	4,858.14	2,058.87
Gurdon District.....	3,648.78	3,581.02	67.76
Prescott District.....	5,108.88	6,640.97	[1,532.09]*
Hope District.....	9,325.63	12,602.51	[3,276.88]*
Garland City District.....	471.22	7,254.84	471.22
Vivian District.....	10,351.15	13,113.70	3,096.31
General	14,419.64		1,305.94
Total	\$91,653.60	\$86,076.15	\$5,577.45
General & Miscellaneous:			
Little Rock District.....	\$1,867.65	\$3,488.52	[\$1,620.87]*
Salary & Expense Supts.....	39,090.54	30,301.84	8,788.70
Legal	4,058.10	13,691.98	[9,633.88]*
Engineering	3,930.47	5,815.61	[1,885.14]*
Shreveport Office.....	35,625.23	37,822.19	[2,196.96]*
Pittsburgh Office.....	25,409.23	20,828.87	4,580.36
Miscellaneous	17,144.09	45,737.45	[28,593.36]*
Total	\$127,125.31	\$157,686.46	[\$30,561.15]*
Taxes	86,229.45	103,289.17	[17,059.72]*
Total Opera. Exp. & Taxes.....	\$1,092,769.40	\$1,637,549.98	[\$545,880.58]*
Net Income from Operations.....	\$648,057.56	\$683,809.54	[\$35,751.98]*

[*Red in copy.]

Comparative Statement Earnings and Expense.—Continued.

	12 months ended December 31.		Increase or decrease.
	1921.	1920.	
Other Income:			
Gas Sales—Bull Bayou.....	\$2,185.94	\$16,646.40	[\$14,460.46]*
Rental from Real Estate.....	2,286.50	4,492.65	[2,206.15]*
Bossier field Earnings.....	56,589.62	128,726.88	[72,137.26]*
Special Gas Purchase Contracts.....	1,264.07	1,546.27	[232.20]*
Miscellaneous	14,248.31	40,766.54	[26,518.23]*
Total	\$76,574.44	\$192,178.74	[\$115,604.30]*
Total Income from Gas Operations.....	\$724,632.00	\$875,988.28	[\$151,356.28]*
Deductions from Income:			
Advertising & Rate Case.....	\$51,137.37	\$9,378.85	\$41,758.52
Adjustments & Bad Gas Accounts.....	64,034.61	115,426.53	[51,391.92]*
Bond Interest.....	1,845.00	91,537.59	[89,692.59]*
Current Interest.....	13,667.40	21,945.28	[8,277.88]*
Insurance	8,945.07	13,798.72	[4,853.65]*
Total	\$139,629.45	\$252,086.97	[\$112,457.52]*
Net Income from Gas Operations.....	\$585,002.55	\$623,901.31	[\$38,898.76]*

*Red in copy. I

EXHIBIT B TO COLE.

Arkansas Natural Gas Company.

*Estimated Earnings and Expense for Year 1922 at Present Rate,
Assuming the Sale of 7,000,000 M Cu. Ft. and Pursuing the Usual
Normal Drilling Campaign.*

	M cu. ft.	Gross.	Our prop.
Domestic Sales:			
Little Rock	1,762,800.9	\$751,281.72	\$500,854.48
Hot Springs	495,261.1	203,267.26	135,511.61
Our plants	813,238	.....	361,529.79
Total domestic	3,071,300		997,895.88
Industrial:			
Little Rock	1,890,060	.....	358,029.65
Hot Springs	706,493	.....	115,926.71
Our plants	1,076,256	.....	294,296.12
Total Industrial ...	3,672,809		\$768,252.48
Field sales	277,510	.....	105,088.60
Total sales	7,021,619		\$1,871,236.96
Expense:			
	1921, actual.	Estimate- increase.	
Gas purchased	\$398,825.35	\$45,500.00	\$444,325.35
Prospect & lease exp.	82,324.53	60,000.00	142,324.53
Production expense .	96,352.56	120,000.00	216,352.56
Transportation	82,475.80	23,000.00	105,475.80
Compressing station .	127,782.80	10,000.00	137,782.80
Distribution	91,653.60	.....	91,653.60
Genl. & Miscl.....	127,125.31	.....	127,125.31
Taxes	86,229.45	15,000.00	101,229.45
Total operating ex- penses and taxes..	\$1,092,769.40	\$273,500.00	\$1,366,269.40
Net income from op- eration	648,057.96	.....	504,967.56
Other income	76,574.44	20,000.00	96,574.44
Total income from gas operations ...	724,632.00	\$253,500.00	\$601,542.00
Deductions from in- come	139,629.45	.....	139,629.45
Total net income from gas opera- tions	585,002.55	\$253,500.00	\$461,912.55

EXHIBIT C TO COLE.

Arkansas Natural Gas Co.

Statement Showing the Estimated Net Operating Revenue if Company Had Pursued Its Normal Drilling and Leasing Campaign for Year 1921.

	Actual for year 1921.		As estimated.
Earnings from Gas Sales:			
Domestic	\$997,895.88	.....	\$997,895.88
Industrial	637,842.48	.....	637,842.48
Field	105,088.60	.....	105,088.60
Total from gas sales.	<u>\$1,740,826.96</u>		<u>\$1,740,826.96</u>
Expense:		Actual for year 1921.	
Gas purchased	\$398,825.35	.....	\$398,825.35
Prospect & lease ex- pense	82,324.53	\$60,000.00	142,324.53
Production	96,352.56	120,000.00	216,352.56
Transportation	82,475.80	23,000.00	105,475.80
Compressing station.	127,782.80	.....	127,782.80
Distribution	91,653.60	.....	91,653.60
General & miscel....	127,125.31	.....	127,125.31
Taxes	86,229.45	.....	86,229.45
Total operating ex- penses & taxes ...	<u>\$1,092,769.40</u>	\$203,000.00	<u>\$1,295,769.40</u>
Net income from op- erations	648,057.56	.....	445,057.56
Other income	76,574.44	.....	76,474.44
Total income from gas operations ...	724,632.00	.....	521,532.00
Deductions from in- come	139,629.45	.....	139,629.45
Total income from gas operations ...	<u>\$585,002.55</u>	.....	<u>\$381,902.55</u>

EXHIBIT D TO COLE.

Arkansas Natural Gas Company.

Gas Investment.

Division.	December 31, 1912.	December 31, 1921.
Production	\$120,607.00	\$366,041.00
Transportation	4,463,520.68	4,806,931.43
Distribution	461,678.14	728,026.05
General	10,835.87	37,356.52
Gas rights & wells acquired.....	5,500,000.00	5,500,000.00
Warehouse (distribution)	32,809.49	63,760.02
Warehouse (transportation & prod.)	65,618.98	100,815.07
Drilling tools .....	.....	16,949.67
Automobiles .....	.....	33,562.49
	<hr/> *\$10,655,070.16	\$11,653,442.25
Increase in investment		\$998,372.09
Increase in Investment by Years:		
1913		\$109,534.49
1914		124,788.94
1915		56,272.58
1916		68,355.06
1917		106,813.73
1918		129,748.96
1919		152,681.33
1920		199,737.56
1921		50,409.44
	<hr/> \$998,372.09	

EXHIBIT E TO COLE.

Depreciation Charges for the Year 1919 and How Handled.

December 31st, 1919, there was depreciation in amount of \$96,958.75 credited to Reserve for Depreciation.

It was later decided by the Board of Directors to follow the Government Plan of Depreciation of Gas Companies; hence the Depreciation of previous years in amount of \$1,328,926.25, including \$14,876.44 on Oil Property which had been deducted from the Capital Investment, was restored to the different features of Investment from which it had been deducted, and credited to Reserve Depreciation, which entitled the Company to charge off additional depreciation on

*Capital Stock issued to Booth & Flinn, Ltd., Contractor, as part consideration for constructing Pipe Lines, \$1,000,000.00, should be added to above investment as of July 1, 1911.

Gas Property of \$474,007.49, which was charged to Profit & Loss and credited to Reserve for Depreciation, making a total Depreciation entry of \$570,966.24; at this time it was decided also to reverse Tangible Material Costs of Gas Wells which had been charged to Expense in error during the year 1919, to Capital Investment Account. Corrections were made in March of 1920.

Taking the above into consideration, the balance sheet as of December 31st, 1919, should be as follows, as reported on Income Tax Statement:

Gross Earnings	\$1,852,607.52
Gross Expense	1,298,988.92
Gross Income	\$553,618.60
Deductions from Income.....	\$198,148.45
Profit & Loss Suspense.....	12,803.09
	210,951.54
Net Earnings	342,767.06
Depreciation	570,966.24
Deficit	[\$228,199.18]*

It is the intention of the Company, in the future, to follow the Government Plan of Depreciation for Gas Companies, which entitled Gas Company to charge 10% annually for Depreciation.

EXHIBIT F TO COLE.

Arkansas Natural Gas Company.

Well Drilling Costs, December 31, 1921.

Year.	No. wells drilled.	Total cost.	Average cost, per well.
1907.	10 Wells Acquired.....	.....	.....
1908.	0	.....	.....
1909.	1	.....	.....
1910.	4	\$19,862.87	\$4,965.73
1911.	3	19,559.84	6,519.95
1912.	11	98,477.53	8,952.50
1913.	5	49,298.61	9,859.72
1914.	2	18,973.15	9,486.58
1915.	1	10,403.12	10,403.12
1916.	7	70,956.86	11,136.69
1917.	11	116,315.06	10,574.09
1918.	8	86,252.20	10,781.53
1919.	11	155,595.44	14,145.04
1920.	9	213,929.58	23,769.99
1921.	2	41,561.85	20,780.95
	<hr/> 85	<hr/> \$901,186.51	

[*Red in copy.]

241

EXHIBIT G TO COLE.

Arkansas Natural Gas Company.

Gas Wells Abandoned.

Ser. No.	Farm name.	Sec., twp., R.	Completed.	Initial prod.	Abandoned.
4	J. E. Whitworth.....	18-20-15	4-10-07	13,000,000	8-30-17
7	W. E. Barnhart.....	21-20-15	5-15-07	12,000,000	9-15-20
8	H. Evans.....	18-20-15	12-15-09	40,000,000	Not con. since Oct. '17.
12	Hansen & Mason.....	29-22-15	8-25-10	50,000,000	10-14-17
13	J. S. Jolly.....	22-22-15	7- 4-10	60,000,000	6-15-16
14	J. S. Jolly.....	22-22-15	11- 9-10	40,000,000	6-15-16
15	J. S. Jolly.....	22-22-15	12-10-10	37,000,000	6-15-16
18	Vivian Oil Co. Fee...	31-22-15	1-29-11	29,000,000	Previous to Nov. 1916
24	Glassell	23-20-15	8-10-12	44,000,000	6-15-16
28	Fee	6-21-15	11-28-22	8,000,000	6-24-19
30	Glassell	36-20-15	1-30-13	3,100,000	6-15-16
45	McMillen	32-17-13	3- 1-16	18,000,000	12- 9-20
46	G. Butler.....	14-16-10	5-15-16	200,000	8-15-16
47	McMillen	32-17-13	5- 5-16	5,000,000	10-20-20
53	H. Wilson.....	30-17-13	2- 9-17	32,000,000	12-21-20
56	Berry	30-17-13	8-27-17	1,000,000	12- 9-20
63	J. Williams.....	30-17-13	3- 4-18	9,000,000	12- 9-20
81	Easterling	34-21-15	2-27-19	4,000,000	5-13-20
82	A. A. Hollingsworth..	19-12-10	2-27-19	2,000,000	2- 9-21

242

EXHIBIT H TO COLE.

Number of Producing Gas Wells and Number of Dry Holes Drilled Each Year by the Arkansas Natural Gas Company.

Year.	Wells Acquired	No. of producing wells drilled yearly.	No. of dry holes drilled yearly.
1909.	Wells Acquired	10	0
1909.	1	0
1910.	4	0
1911.	2	1
1912.	3	8
1913.	4	1
1914.	0	2
1915.	0	1
1916.	3	4
1917.	4	7
1918.	5	3
1919.	9	2
1920.	6	3
1921.	1	1
Total.....		52	33

243 Referring to the statement headed, "Comparative Statement Earnings and Expenses, Gas Department," a deduction of \$64,034.61 from income for the year 1921 as adjustments and bad accounts contains an item that was abnormal for the year 1921. We sold gas to the American Bauxite Company and the Norton Company at a rate of 45 cents, subject to a refund of the difference between the amount charged and the rate as finally adjusted. The difference between the amount charged and the rate charged other consumers is approximately \$57,000.00. I have anticipated the refund by including the excess amount over the rate charged other consumers as a deduction. If we are not required to make a refund then the total net income for the year 1921 would be increased \$57,000.00, and would amount to \$642,002.55 instead of \$585,002.55. The deduction of \$1,845.00 for bond interest was on account of interest paid on the underlying bonds of \$30,000.00 on the Pine Bluff plant. The current interest of \$13,667.40 represents the amount of interest paid on money borrowed to be used as an operating fund. The decrease in the amount expended for well drilling in 1921 as compared with 1920 was \$135,606.99. The Company drilled 2 wells in 1921 as against 9 in 1920. The Company drilled an average of 10 wells per year for each of the years 1917, '18, '19 and '20, and for the five year period including the year 1916, the average drilled per year was 9. We didn't carry on normal drilling operations in 1921 because we didn't know what was before us in the way of revenue. We didn't know whether we would be able to live and continue in business or not. We couldn't go out and drill wells and continue furnishing gas at the price we had been furnishing it theretofore. We cannot maintain the integrity of the property without keeping up the well drilling, and if we fulfil our contracts we will probably have to drill twice as many wells in 1922

as we did in 1920 and 1921. For the year 1921 we simply

244 didn't spend money on the property. In other words, we cut in every way and at every place, not only on our production end but through all departments of the business. We cut absolutely to the bone. There should have been more money spent in 1921 on leasing and prospecting, but we cut all expenses that we could. If we had pursued a normal drilling and leasing campaign for 1921 the total income from gas operations would not have exceeded \$381,902.55, as shown on Exhibit 5. The increase in cost of production, that is, well drilling, would have been at least \$120,000.00, that is, an average of \$15,000.00 per well for eight additional wells, \$15,000.00 representing the drilling cost. In drilling a gas well we charge all tangible or reclaimable property to investment. That includes pipe and casing in the well and fittings on the top of the well. The drilling costs, that is, labor, teaming, freight and everything intangible, is charged to expense. We do that because we find it has always proven out that a gas well just of itself does not increase the earnings. It takes the extension of the pipeline to bring you more earnings, so we charge the labor cost and the drilling to operating expense and the tangible property to capital. That is the practise by all gas companies that I know of.

I have prepared a statement showing estimated earnings and expenses for the year 1922 at present rates assuming the sale of 7 billion cubic feet of gas and pursuing the usual normal drilling campaign. We didn't sell 7 billion cubic feet in 1921, but we hope to increase the sales to that amount in 1922. In increasing the sales it will be necessary to purchase additional gas, which I have estimated on past experience at \$45,500.00. The additional production will subject the Company to production tax of approximately \$15,000.00. The compressing station expense by reason of the increased volume will be increased at least \$10,000.00, and likewise transportation expense will be increased approximately \$23,000.00. The other items of increase are based on normal drilling and prospecting operations. In my best judgment that is a fair estimate of the business for the year 1922 under the present rates. We cannot cut our expenses lower than they were cut during the year 1921. We have already cut them everywhere possible. We have worked on that and studied it thoroughly. We sold for the year 1921 only 6,000,221,000 cubic feet of gas.

I do not believe it would be possible to buy material any cheaper than we are buying it today. Pipe mills in Steel City have been running about 25 to 30 per cent, possibly some at half production, to keep their organization together. Now the minute that business picks up, and there must be an increase in business, it is going to increase the consumption of steel. The minute that the demand for steel comes you are going to pay higher prices for pipe for your pipeline and for your parts.

Referring to the statement showing the Capital Gas Investment, the Investment Account as of December 31, 1912, was \$10,655,070.60, but this did not take into consideration the million dollars of stock issued to the contractors as a part of the consideration for construction of the line, and the Capital Investment Account as of date December 31, 1912, should be increased to \$11,655,070.16. The increase in investment subsequent to December 31, 1912, is \$998,372.09, which I have tabulated showing the amount of the increase in the investment for each year from 1913 to 1921. I have put in an exhibit to show how I have adjusted depreciation on the Company's books. Originally depreciation was carried as a deduction from the capital investment. In 1920 we changed the system, charging back to capital investment the amount that had been deducted for depreciation in previous years and crediting the amount to a reserve depreciation account. The Company has not since it began to operate been able to pay out of its gas operations during the entire period until now any dividends to its stockholders other than dividends on the preferred stock, which preferred stock was originally represented in bonds.

Q. Where did you get the money, the \$998,000, nearly a million dollars, you put back into the property under the head of Improvements and Additions?

A. Failure to pay dividends on the capital investment and by borrowing.

The company was organized in 1909 under the laws of the State of Delaware. Its authorized capital stock was five million five hundred thousand dollars, which was issued for the acquisition of the original gas acreage and gas wells which were acquired from J. C. Trees and his associates. This original acreage, which was located in the Vivian and Oil City districts of the Caddo field and in northeastern Texas, comprised something in excess of one hundred thousand acres. On these leases ten gas wells had been brought in in the Vivian and Oil City districts with an open flow capacity of three hundred million cubic feet per day.

The company issued and sold \$2,750,000.00 of first mortgage bonds, and in 1910, after surveys and estimates had been completed, it was found necessary to increase the mortgage indebtedness and a new issue of \$5,000,000.00 general mortgage bonds was authorized. The first mortgage bonds of \$2,750,000.00 were called in and all but \$270,000.00 of the same were turned in and replaced by bonds of the new issue. \$4,000,000.00 of the general mortgage bonds were sold and used in taking up the first mortgage bonds; these were serial bonds, five hundred thousand dollars being payable in each year beginning May 1st, 1913. When the first installment of the bonds matured the company was not in position to retire them; in fact, it couldn't pay the interest. It applied to

247 and obtained from the bondholders an extension of time in which to begin payment of the serial installments from May 1st, 1913, to May 1st, 1916. In May, 1916, the company was still in very bad financial condition; in fact, at that time it didn't have the money to pay the bond interest. In the meantime the company had issued the additional \$1,000,000.00 of bonds authorized under the general mortgage and had deposited the same as collateral for loans made to the company by banks in Pittsburgh, which loans were also secured by the personal endorsement of the chief stockholders of the company; so, on May 1st, 1916, the company, in addition to being unable to pay interest on its bonds and to retire the first installment of five hundred thousand dollars maturing, was indebted on floating loans evidenced by bills payable in a sum from \$1,250,000.00 to \$1,400,000.00. To make the conditions worse, the holders of the bills payable demanded payment. This necessitated re-financing. The re-financing was accomplished as follows: The stockholders who had endorsed the company's paper to the banks agreed to take the million dollars of bonds put up as collateral for the loans at the same price the \$4,000,000.00 had been sold to other holders; that is, at five per cent. discount. The million dollars of bonds was sold to them and the proceeds of \$950,000.00 applied on the floating loan, leaving between three and four hundred thousand dollars still owing the banks. The bondholders then agreed, in order to lessen the company's interest obligations, to surrender fifty per cent. of their bonds and take in lieu thereof seven per cent. cumulative preferred stock. Of the five million outstanding, two hundred and seventy thousand was held in the treasury for retirement of the first mortgage bonds of two hundred and seventy thousand dollars, leaving outstanding four million seven hundred and

thirty thousand dollars. The bondholders holding these bonds surrendered them, taking \$2,365,000.00 in bonds of a new issue 248 and \$2,365,000.00 in preferred stock providing for seven per cent. cumulative dividends. The new bonds provided for a sinking fund to be created out of the gross sales of gas for retirement of the bonds. Under this plan the company could defer the payment of dividends on the preferred stock and devote the amounts theretofore used for payment of interest on the equivalent in par value of bonds for extensions and improvements; and it did defer the payment of interest for the period of four years, otherwise it would not have been able to take care of the necessary improvements and additions to the property.

The original issue of \$5,500,000.00 worth of stock was increased to \$6,500,000.00 in 1910, the additional one million of stock being paid to the contractors as a part of their fee for construction of the pipeline system. The \$4,000,000.00 of general mortgage bonds which were sold at five per cent. discount carried with them \$4,000,-000.00 in par value of common stock. The stockholders to whom were issued \$5,500,000.00 of common stock as payment for the original gas wells and gas acreage in 1910 turned back \$4,000,-000.00 to the company to be used by it as a bonus in connection with the sale of \$4,000,000.00 of the first mortgage bonds. In 1916, when the company was re-financed, in order to put the stockholders who agreed to purchase the additional one million dollars of bonds then held by the banks as collateral on a parity with the other bondholders, it was necessary to give them a like amount of stock; so the company, in 1916, increased its common capital stock from \$6,500,000.00 to \$7,500,000.00, turning over the increased issue to the purchasers of the additional \$1,000,000.00 of bonds. All of the \$5,000,000.00 of bonds issued in 1916 were retired in 1920 by the sale of common stock.

In 1919 the company developed a good paying oil property near Homer, Louisiana, in what is known as the "Homer Oil 249 Field," and through this development gave a market to its capital stock. Originally the company borrowed five hundred thousand dollars to conduct that campaign. Then in 1919 it sold \$196,500.00 of common stock at par, the proceeds of which were used to take up the indebtedness created in developing the oil properties and to provide working capital for the oil properties. In 1920 the directors decided it advantageous to retire the preferred stock and all the bonds so there would be no direct lien on the property and so that it would have outstanding only common stock. This was done by a further sale of common stock. "I think that sale was \$5,044,000.00 which brought the company enough money to retire the preferred stock, and to retire all outstanding bonds except \$30,000.00 of bonds outstanding on the Pine Bluff property. The stock was sold at par. The contract exhibited to me and which I now file as an exhibit to my evidence is the contract with the contractors providing for the payment of \$1,000,000.00 in common stock as a part of the consideration for construction of the pipeline system."

Cross-examination:

"The company has \$13,430,750.00 of common stock outstanding. Money was paid for all of it except \$7,500,000.00, and I have always figured \$5,500,000.00 of that was the same as money, being stock issued in payment of the gas rights and gas wells, as we couldn't have built the line if we had not had the gas wells and leases. Booth & Flynn were the contractors who took the contract for the construction of the plant. They were not interested in the Arkansas Natural Gas Company at the time they took the same, nor to my knowledge in the J. C. Trees Oil Company. There was in the neighborhood of one hundred thousand acres covered by the original arrangement between the Trees Oil Company and the Arkansas Natural Gas Company."

Question. "On your exhibit, the first page, I am struck 250 with the decrease in the industrial gas sales. Is that explained by the competitive prices of other fuels?"

Answer. "It would more reasonably show the condition of business."

Question. "You don't know, as a matter of fact, that almost all the large industries have gone from gas to other fuel-s?"

Answer. "I know they have quit operating and are not doing anything."

Question. "That is not an answer to my question."

Answer. "No, I don't know."

Question. "Can you call to mind some of the large industries that are not doing anything?"

Answer. "The American Bauxite Company and Norton Company, I don't know whether they shut down or not but I know they are not using any gas. I know that the Little Rock Railway & Electric Company and the Arkansaw Water Company and most of the oil mills are not now using gas, but that they are still operating."

The major portion of the deduction from income for Advertising and Rate Case of \$41,758.52 more than for the year 1920 is on account of the expense incurred in trying the rate case before the Commission, which was an unusual expense for the year 1921.

The capital account on the company's books of Plant Investment for November, 1920, was about \$5,500,000.00, and Reserve for Depreciation shown was about \$3,182,000.00. That represented what had been put into the property outside of the capital stock issued for the gas leases and the million dollars' worth of stock issued to the contractors. "I did not know anything about the million dollars issued to the contractors at the time of the last hearing (The hearing before the Commission). Had I known of it it would have shown in a different shape. The ten wells that were purchased were drilled by Barksdale and his associates in the Caddo Parish near Oil City. The Trees people did not acquire this acreage, but it went in with the acreage acquired from the Trees Oil Company for which the \$5,500,000.00 of stock was issued. I presume this acreage was originally drilled for oil; it is generally the result of drilling for oil that you find gas." 251

The aggregate of the meter deposits held by the company at this time is about \$50,000.00. The leasing and paying rentals on the land and rentals on the acreage has been customarily charged to operating expense. The matter of taking leases is a continuing and shifting one; that is we are continually taking new leases and surrendering old leases. Prior to 1919 all leases were charged to the gas end of the business until oil would be discovered, at which time that lease would be transferred from the gas division to the oil division at the cost price and the cost of drilling the well. In 1919 some acreage was acquired in Mississippi and a well drilled on it. The company got a franchise from the City of Jackson, Mississippi, to supply it with gas; that was all charged to gas expense. We also acquired acreage in Kentucky and in Alabama prior to 1919 which was charged to gas expense. The acreage in Alabama instead of being four thousand acres was one hundred and eighty. I would say the leases in Kentucky, Mississippi and Alabama carried the oil rights as well as the gas rights; I did not read the leases, but that is customary. They were charged to gas account. The gas company, when it filed its temporary income tax return last year paid seventy-five hundred dollars, but in making our final return we have set up depreciation and depletion for both oil and gas divisions whereby, if it is maintained or approved by the Internal Revenue Department, we will not pay any income tax but will have a refund of that amount. No payment of income tax has been charged under the item "Taxes" included in operating expense in that statement filed with the Court. There was \$105,000.00 of gas sold in Louisiana for 1921 included in the above statement of gross revenues; it is gas sold to operators in the field; there was 252 probably about five or six thousand dollars sold to domestic consumers; there are a few domestic consumers south of the Arkansas line. The tax for the oil property is charged against oil business and is not included in the item of taxes for gas division in my statement of operating expenses filed herein."

Redirect examination:

"Of the item of \$51,000.00 carried as a deduction from income for 1921, paid for advertising and rate case, about five thousand dollars was paid for advertising and forty-six thousand dollars for expense of rate case. I did not spread the rate case expense over a period of two or three years, because from the looks of matters now it is fair to estimate that we will still continue to have that rate case expense; that this year (1922) it will probably run to the same amount. It costs considerably to prepare and hold these cases. We paid five per cent. interest on meter deposits, and the amount so paid is charged as a part of the current interest.

In drilling for gas wells prior to 1919 we brought in some oil wells and then we would transfer the expense to the oil division; that account was carried on the books as 'Farm Expense' and 'Farm Investment.' We were not engaged in the business, and the small oil developed came incidentally. The money expended for leases in Kentucky, Alabama and Mississippi, and for drilling the well on

leases acquired in Mississippi, and which was charged up at the time to gas operating expense, was all taken out of the gas accounts and transferred to oil, and oil is now carrying the expense. The annual domestic business done in Louisiana is five or six thousand dollars from a few domestic consumers immediately south of the Arkansass line. We give the Arkansas business credit for all of this revenue, as well as the revenue derived from field sales. Every earning of every character, including rentals from property that 253 is made in Louisiana or Arkansas, is carried into our earnings statement filed here. The gas business is given credit for any earning that in any way relates to it. The expense is charged the same way. It is necessary to collect fifty thousand dollars from our customers to be expended in litigation to protect our business and to get a fair return. The expense to this time does not take into account, except in a small way, the fees of attorneys; the expense has been incurred for experts and people brought down here for a long hearing that extended over six weeks. Our lawyers are yet to be paid for their services.

J. K. ANDERSON, on direct examination, testified:

I live at Charleston, West Virginia. I am a consulting engineer. I am at this time representing as consulting engineer several large gas companies operating in Pennsylvania and studying their rate situation and making valuations of property for them. (Qualifications of Mr. Anderson were admitted.) I have made a study of the gas supply and the gas rate situation of the Arkansas Natural Gas Company and I have made a physical valuation of the property jointly with Mr. Kramer, and in my opinion the present fair value of the property as shown in our report of \$8,404,294.87 is a fair and correct estimate of the value of the property as a going concern for rate-making purposes as of date January 1st, 1922. Question: "Now, as an incident to that, before leaving the subject, state to the Court in a general way what the level of prices were as of January 1st, 1922, as compared with the preceding years, particularly with reference to whether a low level has been reached, in your opinion, that makes a valuation at this time a stable valuation for some time to come." Answer: "During the War values were very high, both for materials and labor; since that time steel prices have been reduced, I 254 think, to the lowest level to which they are likely to go for sometime; and labor in many sections of the country has also been very much reduced, in some instances, though, still remaining high; for instance, railroad labor and coal mine labor. But I believe, with the possible exception of a little reduction in labor, that the prices as fixed as of January 1st, 1922, are as low prices as we may expect for some time to come; but on the contrary it will increase as to material and price of labor with the resumption of business, which I confidently look to occur in the next year. In fact, I look for some increase in business in your section here right off way. I think we have reached the low level and are on the up-grade. I think our valuation is a conservative valuation for several years to come; I would say four or five years. I wouldn't like to pose as *

prophet, but that is my judgment." The witness then filed with the Court his report on the natural gas rates required by the Arkansas Natural Gas Company to yield it a fair return on the property used or useful in serving the public, and a return on the invested capital to the shareholders within the expectant life of the gas fields based upon the cost of production, a private business, and the cost of transportation and distribution, a public service, which is as follows:

255

EXHIBIT A TO ANDERSON.

Report on Natural Gas Rates Required by the Arkansas Natural Gas Company, Shreveport, La., to Yield a Fair Return on the Property Used or Useful in Serving the Public and a Return of the Invested Capital to the Shareholders Within the Expectant Life of the Gas Fields Based upon the Cost of Production, a Private Business, and the Cost of Transportation and Distribution, a Public Service.

By

Anderson & Taylor,
Consulting Engineers.

Anderson & Taylor, Consulting Engineers, Rooms 504-507
Coyle & Richardson Bldg., Charleston-Kanawha, W. Va.
Charleston, W. Va., February, 1922.

256 J. K. Anderson.

J. K. Anderson, Professional Engineer, State of West Virginia, Registered No. 6.

George E. Taylor.

Geo. E. Taylor, Professional Engineer, State of West Virginia, Registered No. 5.

Offices: Coyle & Richardson Bldg., Rooms 504 & 507.
Phone Capitol 2345.

Anderson & Taylor,
Consulting Engineers.

Public Utility Valuations—Rate Cases a Specialty.

Charleston-Kanawha, W. Va.

Mr. J. R. Munce, General Manager,
Arkansas Natural Gas Company,
Shreveport, Louisiana.

February 28, 1922.

DEAR SIR:

We hand you herewith one original and two (2) carbon copies of our report entitled:

"Report on Natural Gas Rates required by the Arkansas Natural Gas Company, Shreveport, Louisiana to yield a fair return on the

property used and useful in serving the public and a return of the invested capital to the shareholders within the expectant life of the gas fields, based upon the cost of production, a private business and the cost of transportation and distribution, a public service."

Which we trust will furnish the information desired and be of value to your Company, not only at the present time, but in connection with future rate questions.

Very truly yours,

ANDERSON & TAYLOR,
By J. K. ANDERSON.

Table of Contents.

	Page
Introduction	1
Map of Natural Gas Property in Louisiana and Arkansas	2
Inventory and Valuation—How Obtained	4
Valuation for Rate-Making Purposes	5
Salvage Values	5
Amounts to be Repaid to Stockholders	6
Operating Expenses 1920, 1921 and Estimated for 1922	7
Rate of Return on Investment	8
Rate of Return for Risk Incident to the Business	8
Return of Invested Capital to Stockholders	9
History of Development	10
Caddo Gas Field	11
Cedar Grove Gas Field	12
Elm Grove Gas Field	13
Bethany Gas Field	15
South Bethany Gas Field	16
Webster Parish Field	17
Expectant Life of Gas Supply in Sight	18
Division of Property and Business (Discussion)	18
258 Private Mining Business	20
Public Service	20
Estimated Production for the Year 1922	20
Gas Purchased for the Year 1922	21
Estimated Consumption by Consumers' Districts for the Year 1922	21
Apportionment of Estimated Expenses 1922 between Production, Transmission and Distribution	23
Estimated Amount of Gas Produced, Delivered to Town Border Gates and to Consumers' Meters for 1922	24
Estimated Gross Income Required for Year 1922, for Production, for Transmission and Distribution	25
Production cost Per M cu. ft.	25
Transmission Cost per M cu. ft.	25
Distribution Cost per M cu. ft.	25
Town Border Rate	26
Consumers' Meter Rate	26
Estimated Loss of Income under Contemplated Rates as compared with Income to which the Utility is Entitled	26

Introduction.

In compliance with the request of the Arkansas Natural Gas Company. We have made a study of the rates required for gas sold to its domestic and industrial consumers, based upon the condition of the Company's business as of January 1st, 1922.

The property of this Company consists of producing natural gas fields; three in number, located at Oil City and Cedar Grove, in the Parish of Caddo, and at Elm Grove located in the Parish of Bossier in the State of Louisiana. They also own property in the Bethany Field located about twenty-five miles Southwest from the City of Shreveport in the Parish of Caddo, Louisiana, and in the adjoining Counties of Panola and Harrison, in the State of Texas. Some gas from the northern end of this field, near Bethany, on the properties owned by others, is being marketed through a 12 inch line of the Southwestern Gas & Electric Company, leading to Shreveport, Louisiana.

This grouping is made so as to include in each group, wells producing from the same sands and generally under the same conditions of operation.

(Here follows map marked page 260.)

261 The general location of the producing gas fields is shown in red upon the accompanying Plate No. 1.

The Company's lands and leaseholds consist of 5,100.5 acres of operated territory and 64,232.2 acres of unoperated territory; located as follows:

In the State of Louisiana, 4,830.5 acres operated, and 35,430.47 acres unoperated territory. In the State of Texas, 270 acres operated and 8,324.13 acres unoperated, and in the State of Arkansas, 20,477.57 acres unoperated territory.

The lines used in transporting gas from the producing fields and that purchased from other utilities and private producers are located in the States of Louisiana and Arkansas. The transportation lines vary in size from 18, 16 and 12 inches in diameter and extend an approximate distance of 178.4 miles from De Soto Compressor Station near Oil City in Caddo Parish, Louisiana to Little Rock, Arkansas. Branch lines to Hot Springs, Pine Bluff and other towns vary from 6 to 12 inches in diameter and total 71.51 miles. Gathering lines and small size branch lines total 44.11 miles, a grand total of 294 miles of transportation, branch and gathering lines. The principal lines of the system are shown in solid black on Plate No. 1.

The distribution systems in towns served by the Arkansas Natural Gas Company embrace lines from 1 to 10 inches in diameter and have a total length of 168 miles of pipe, or a grand total in the entire transmission and distribution system of 462 miles.

262 The Company owns two large gas compressor stations; the Rogers Station near Lewis, Caddo Parish, Louisiana, of 3,900 horsepower, and the De Soto Station near Oil City, Caddo Parish, Louisiana, of 1,800 horsepower.

The larger portion of gas produced by the utility and purchased from others is transported through lines of the Reserve Natural Gas Company, to De Soto Compressor Station of your Company, shown on Plate No. 1 in broken black lines.

The gas produced and purchased in Caddo and Bossier Parishes, Louisiana, is compressed and transmitted in a northeasterly direction, and is distributed to domestic and industrial consumers in some twenty-five cities and towns along the main transmission lines, and is sold to Distributing Utilities in the cities of Hot Springs and Little Rock, Arkansas. By far, the larger part of the gas is sold and consumed in the cities of Hot Springs, Little Rock, Pine Bluff and Bauxite, located on the extreme northern part of the transmission system. The location of the various cities and towns, so supplied, is shown on Plate No. 1.

Inventory and Valuation.

In considering the selling price of any commodity, or of any public service, it first becomes necessary to determine the value of the property producing the commodity and the value of the property used and useful in serving the public.

263 For the purposes of this investigation, an inventory and valuation dated February, 1922, was made by Mr. C. W.

Kramer, formerly Chief Engineer, and now in charge of the Gas Distribution Department of the Arkansas Natural Gas Company, and the firm of Anderson & Taylor, Consulting Engineers, as of Date January 1st, 1922.

The investment value of \$8,404,294.87 in natural gas properties for rate making purposes is taken from the valuation made as of January 1st, 1922, by Mr. C. W. Kramer, and Anderson & Taylor, for the purpose of this investigation, which are as follows:

Values for Rate Making Purposes.

Production.	Transmission.	Distribution.	Total.
\$1,999,337.40	\$5,269,948.90	\$1,135,008.57	\$8,404,294.87

Salvage Values.

The amount of Salvage Values in this property is problematical. In the smaller towns where it will not pay to install manufactured gas plants—it is evident the distribution plant will have little or no Salvage Value after the exhaustion of the supply of natural gas.

In the larger cities where artificial gas has heretofore been supplied, or where the city is of sufficient size to warrant the installation of an artificial gas plant, the distribution system would have its original cost value less accrued depreciation. This would probably be the case in the City of Pine Bluff, Arkansas.

264 In the matter of the larger pipe lines of the transmission system, although there might be some sections such as the Sulphur River Section where soil conditions had greatly damaged the pipe, yet there would probably be some Salvage Value over and above the cost of taking up the lines, four inches or over in diameter, depending on the price of pipe, the cost of labor and teaming, and possible future demand for such sized pipe.

The same reasoning would apply to casing and equipment of gas wells used for production, except that the losses of casing and material at wells would be much larger than in the case of the transmission lines.

We estimate the salvage values of this property at \$630,000.00, apportioned as follows:

Production.	Transmission.	Distribution.	Total.
\$30,000.00	\$440,000.00	\$160,000.00	\$630,000.00

Deducting these salvage values from the values for rate making purposes leaves the amounts to be amortized or returned to the shareholders as liquidating dividends as follows:

To be Repaid to Stockholders.

Production.	Transmission.	Distribution.	Total.
\$1,969,337.40	\$4,829,948.90	\$975,008.57	\$7,774,294.87

Operating Expenses for the Year 1922.

The estimated operating expenses for the year 1922 are based upon the operating expenses for the years 1920 and 1921, with such increases and deductions as were necessary because of changes in the wages or salaries paid or prices of materials purchased and amount of gas purchased.

A comparison of the principal items for the years 1920, and 1921, with the estimated amounts for 1922, is as follows:

Item.	1920.	1921.	1922 (est.).
Production	\$452,800.54	\$178,677.09	\$351,000.00
Gas Purchased	594,419.53	398,825.35	448,588.50
Transportation	83,928.53	64,691.46	75,000.00
Compressor Station.	142,451.06	127,782.80	135,000.00
Distribution	86,076.15	91,653.60	90,000.00
Telephone	16,898.54	17,784.34	19,000.00
General and Miscellaneous, including Taxes.....	260,975.63	213,354.77	223,729.00
Advertising and Rate Case	9,378.85	51,137.37	35,000.00
Adjustment and Bad Accounts	115,426.53	64,034.61	10,000.00
Current Interest....	21,945.28	13,667.40	14,000.00
Insurance	13,798.72	8,945.07	9,000.00
Totals	\$1,798,099.36	\$1,230,553.86	\$1,410,317.50

Rate of Return on Investment.

The rate of return to the shareholders should be at least equal to the rate of return which would be demanded by the investor in any safe business where the value of the investment would not be depreciated and the original capital would be returned to the investors during the continuance or upon the cessation of the business.

Rate of Return for Risk Incident to the Business.

It is well known that certain kinds of business are more hazardous and subject to greater liabilities and losses than others. This is notably the case in all mining operations, the manufacture of explosives and especially in the production, transportation, distribution and sale of natural gas.

The risks of destruction of life and property and loss of natural gas due to breakage of high pressure mains, the breakage or leakage of distribution mains and services; and of service lines in cities, towns, buildings and homes, with the added danger of possible fire and explosions causing personal injuries or loss of life and destruction of property, make it absolutely necessary to insure the investor

of an additional return on his investment to cover such increased risks incident to the natural gas business.

267 Return of Invested Capital to Shareholders.

No sane investor could be induced to place his money in any short-lived and hazardous business without the confident expectation and belief of receiving a fair return on his investment and an additional return for the risk incident to the business during the life of the business. He would with like confidence expect that his capital would also be maintained intact and returned to him in cash during the life of the business or at its end.

An additional amount should, therefore, be allowed for return of capital to the shareholders as a liquidating distribution to cover depreciation and depletion of property.

Such return of invested capital is commonly called a liquidating distribution and all natural gas utilities, or any other business of like nature, is absolutely justified in providing for, and paying to, its stockholders such liquidating distributions in addition to regular dividends paid out of earnings.

No investment banker would be willing to finance any public or private business unless the above rate of return upon the investment, the risk incident to the business, and the return of the original capital intact, could be absolutely assured.

In order to intelligently ascertain what amount should be returned each year to the stockholders of your Company as a liquidating distribution or return of invested capital to the shareholders, both in

268 the private business of mining and producing natural gas, and in the public service of transporting, distributing and selling natural gas, information was obtained from your Company and of other natural gas companies operating in the same fields as to the rock pressure records of their several wells in each field.

From the knowledge of the amount of gas removed from the several gas fields in which the gas company has territory, from records of the different producing, purchasing and transporting companies and records showing the original rock pressure of the different fields at the time of discovery and at the present time, the remaining gas available and minable in the several fields may be estimated. From this information the amount of gas which this company may expect to obtain and the expectant length of life of such supplies may be estimated.

The Company originally obtained its supply of gas in and around Oil City, in Caddo Parish, Louisiana, having an estimated development of open flow of gas of 300,000,000 cubic feet per day. It later constructed transmission lines to Little Rock and other towns in Arkansas, which lines were completed about July 1st, 1911. It, at the same time, constructed the Rogers Compressor Station near Lewis, Louisiana.

This gas development, later proved to be practically within an extension of the Caddo Oil Field. Immense volumes of gas escaped through the drilling and operation of oil wells and a large portion

was lost through the reckless and wasteful methods of other parties in handling their wells. This development, later extended to 269 the south of Oil City, where, following the decline in rock pressure, the De Soto Compressor Station was installed.

The then known supply in Caddo Field showing signs of exhaustion, the Arkansas Company secured leases and agreements for purchase of gas in other fields, including the De Soto Field, lying about 54 miles southeast of Oil City, Louisiana. It being unable to build or finance the building of a transmission line to said field, various interested individuals personally organized the Reserve Natural Gas Company. They built a 16 inch main line in 1914 from the De Soto Compressing Station of the Arkansas Natural Gas Company south through the Cross Lake Field near Shreveport to the De Soto Field. In 1916 the Reserve Natural Gas Company built a short branch line to the Cedar Grove Field, lying 5 to 6 miles south of Shreveport. With the decline in rock pressure in the De Soto Field, so that but little gas was delivered against line pressure, the southerly end of the Reserve Natural Gas Company's main serving the De Soto Field was removed in 1917 and re-laid in 1917-1918 as a branch to reach the Elm Grove or Bossier Field, lying about 15 miles southeast of Shreveport, Louisiana.

Caddo Fields.

The Caddo Fields embracing Vivian and Oil City areas, delivered gas to the Arkansas Natural Gas Company in 1910. At that time the rock pressure on the wells was 440 pounds, decreasing in 270 January, 1922, to about an average of 10 pounds.

Because of the extensive use of the Compressor Stations, the amount of gas obtained from this field was greater than was expected. This field is abnormally free from salt water troubles. No other known fields in Louisiana are producing gas at such low rock pressures without being drowned out by salt water.

Rock pressure tests made by the writer in Oil City Field in January, 1921, showed 6, 8, 8½, 9½ and 11 pounds, while the same wells in February, 1922, showed, 6, 7, 7½, 8 and 9 pounds.

Cedar Grove Field.

The Woodbine or deep sand, furnishes all the gas in this field. The field was opened in March, 1918, with a rock pressure of 1,030 pounds, dropping to about 25 pounds at the end of 1921. Salt water flooded the gas sands when the pressure reached 20 pounds on several leases, causing the wells to be abandoned.

Rock pressure tests made by the writer in January, 1921, on three wells not producing for some time, showed 52, 52½ and 52½ pounds. In February, 1922, when visiting these wells, one was dead and the other two showed rock pressures of 50 pounds each, although no gas had been produced during that time. There is no present market for this gas. The South Western Gas and Electric Company is taking no gas from this field. The Texas Company is taking twenty mil-

lion feet per month from five wells at 40 pounds rock pressure, using the gas locally.

271

Elm Grove Field.

This field contains two productive sands, viz., the Nacatoch 800 to 900 feet, and the Woodbine 2,450 to 2,550 feet below the surface. Neither sand is productive throughout the field. The shallow sand produces in the western part of the field and the deep sand produces principally in the eastern side.

Approximately 82,000,000,000 cubic feet of gas has been mined and metered from this field since its discovery in 1917 to January 1, 1922.

Since the development of this field, the rock pressure declined from 400 to 245 pounds on an average in the Nacatoch sand, and from 1,100 to 305 pounds in the Woodbine sand.

The wild well known as the White well, Woodbine sand in the eastern edge of the Elm Grove or Bossier field blew out without stoppage for about two years before exhaustion. The Knight Well, Nacatoch sand, destroyed by Red River wasted tremendous quantities of gas and is still uncontrolled. It is estimated that the loss in these wild wells and in the drilling in of other wells, has been at least 5,000,000,000 cubic feet. The encroachment of salt water in the wells of the Woodbine sand has given cause for much concern. Because of encroaching salt water in these wells, only a small part of their capacity can be utilized without throwing salt water into the lines.

The 5,000,000,000 cubic feet of gas lost in wild wells and in drilling in new wells is believed to have been about 1,000,000,000 272 from the Nacatoch sand, and 4,000,000,000 from the Woodbine sand, making the total exhaustion of the field 87,000,000,000 cubic feet.

The percentage decline in rock pressure is an approximation of the amount of exhaustion in gas fields. Where there is an encroachment of salt water, the space occupied by the original gas body is decreased, and the rock pressure is correspondingly increased.

The decline in rock pressure in these sands and the amount of exhaustion is represented as follows:

Sand.	Rock pressure.	% of decline.	Cubic feet.
Nacatoch	400 to 245 pounds..	39%	36,000,000,000
Woodbine	1,100 to 305 pounds..	72%	51,000,000,000
Total.....			87,000,000,000

The total estimated amount remaining is shown by the following table:

Sand.	% remaining.	Cubic feet.
Nacatoch	61%	45,000,000,000
Woodbine	28%	20,000,000,000
Total		65,000,000,000

It will be necessary to mine from the Bossier Field about 23,000,000 cubic feet per year to meet all demands, and of the 65,000,000 cubic feet remaining it is probable that not over 45,000,000,000 cubic feet can be mined, due to water encroachments, so that the expectant life of this field will be about two years on this basis.

273 A visit was made by the writer to this field in January, 1921, and again in February, 1922. A marked decline in rock pressure and increased amount of salt water was noted.

The Van Hoose Well No. 97, a big producer a year ago, was practically dead with a rock pressure of only 11 pounds.

The Reserve Natural Gas Company last year installed a Compressor Station of 1,700 horsepower at Elm Grove for use in this field. The Louisiana Gas Company at the same time completed a Compressor Station at Elm Grove of 850 horsepower.

Bethany Field.

The Bethany gas field is located in Caddo Parish, Louisiana, and Panola and Harrison Counties, Texas.

The North Bethany field, in and about the town of Bethany, produces from the Nacatoch and deep Bethany sand or limestone below the Woodbine sand. The original rock pressure of the Nacatoch sand was 450 pounds and of the deep Bethany sand 1,200 pounds. The present rock pressure is about 200 pounds for the Nacatoch and about 300 pounds for the deep Bethany sand.

The percentage decline in open flow and in rock pressure is about 55% for the Nacatoch and 75% for the Bethany deep sand.

The Aaron Jeter well, owned by the Gulf Refining Company, which was a large producer one year ago, is now abandoned.

Other wells are making a great deal of salt water.

The Southwestern Gas & Electric Company has a 12 inch line from this field which supplies a portion of the gas used in the City of Shreveport, Louisiana.

274 The fear, that this North Bethany field was not promising a year ago because of encroaching salt water, has proven well founded. The amount mined and metered to January 1, 1922, was 3,968,700,000 cubic feet, leaving an estimated amount of gas in the sand of 1,736,000,000 cubic feet.

South Bethany Field.

The South Bethany field is situated about five or six miles south of Bethany and covers about twenty-five square miles, located largely in Panola Co., Tex. There are seven wells completed in the Woodbine sand, two in the Blossom and one in the Nacatoch sand. No gas had been marketed up to January 1, 1922.

The average initial rock pressure in the wells in the Woodbine sand is 1,050 pounds, in the Blossom sand 840 pounds and in the Nacatoch sand 350 pounds.

The average initial open flow of wells in the Woodbine sand is about 17,000,000 cubic feet per day.

It is estimated that the quantities of gas in this field is as follows:

Woodbine Sand	58,575,000,000 Cubic Feet.
Blossom Sand	10,000,000,000 Cubic Feet.
Nacatoch Sand	2,500,000,000 Cubic Feet.
Total	71,075,000,000 Cubic Feet.

On a basis of 23,000,000,000 cubic feet annual demand, the expectant life would be about two and a half years.

The Reserve Natural Gas Company is now laying a 16 inch line, about 23 miles long, into this field.

275 The Industrial Gas Company has already laid an 8 inch line in this field and is taking gas to Marshall, Texas.

Webster Parish Field.

The Webster Parish field comprising Township 23 North, Ranges 9, 10 and 11 West, Township 22 North, Ranges 9, 10 and 11 West, lies about 5 or 6 miles northeast of Sarepta, Louisiana. Three gas wells have been completed therein as follows: In Section 20, Township 23, Range 9, Sinclair Oil Company, Mayfield No. 1—7 million cubic feet open flow—completed September 20, 1921—rock pressure 1,030 pounds. When visited by the writer, February 23, 1922, this well was being blown off, making salt water and a head of oil about every ten minutes and sometimes every three minutes, and a separator was being installed.

About 2½ miles south of this well, the Munn Well No. 1, owned by the Portland Syndicate, was visited by the writer on same date. This well was completed October 6, 1921, showing 1,210 pounds initial rock pressure and 44,000,000 cubic feet open flow.

This well was feeding into the line against 650 pounds line pressure and showed a pressure in the well of 1,000 pounds. It was delivering about 11 million cubic feet of gas per day under these conditions.

The Floyd Harris, et al., Pine Wood Lumber Company, No. 1, Section 34, Township 23, Range 11, with an estimated open flow of 20 million cubic feet, is now closed in.

276 In the opinion of geologists, the development of this field to date is not sufficient to estimate the possibilities of the territory as a commercial gas field, and does not warrant the expenditure required for the construction of a transmission line from the main lines of this Company to this field.

Expectant Life of Gas Supply in Sight.

From the preceding study of the fields from which you may reasonably expect to obtain your gas, it appears that, at the present rate of gas consumption, the Company may expect about five years supply.

Division of Property and Business.

The production of natural gas is a private business. Natural gas is a commodity. This statement no more admits of question than in the case of mining coal, iron ore, gold, silver or any other commodity which is mined and prepared for market.

Natural gas is by nature already prepared and refined for immediate consumption.

The private business of mining gas, before the formation of any public service commission, was not kept separate and distinct by the natural gas companies because the matter of production, distribution and sale of gas, starting oftentimes with a small production, was more conveniently handled without separation. This was especially

true because of the difficulty of keeping an accurate account
277 of the time devoted by the officers and employes, who devoted irregular amounts of time to the business of production and to the public service business.

Upon the formation of the different public service commissions, the natural gas companies did not, themselves, assert plainly that the production of natural gas was a private business and that it was a commodity. They did not deny, or prosecute to a final determination in the Supreme Court, the jurisdiction of the Commissions to regulate or set a selling price on such commodity, produced by a corporation or individual engaged in such private business.

The greatest difficulty, confronting commissions in determining just and reasonable rates at which natural gas companies should serve and sell such commodity to the public, has been occasioned by the failure on the part of the natural gas companies to sever their private business of production from their public service business of transmission and distribution.

What rule should be followed in determining what part is a private business, and what part is a public service? In the case of coal or oil, there is no question that its transportation is considered a public service, being performed by public carriers, either railroad or pipe line. It is believed that the lands owned or leased, together with the wells and machinery required in the production or mining of natural gas to deliver it at the surface of the ground, is clearly a private mining venture.

The power to fix the price of any commodity, except in times of war, does not lie with any court or commission and therefore, 278 the company or individual mining and producing the commodity known as natural gas, is the sole judge as to what price will be asked for the commodity at the mouth of the well.

The transportation of any commodity by railroads, pipe lines and steamships is clearly a public service.

The public service commissions have taken jurisdiction over the selling price of the commodity, which includes the two items of value, the price of the commodity prepared for market at the mouth of the well, and the public service charge of transportation and dis-

tribution, by fixing the price natural gas utilities are permitted to charge their domestic and industrial consumers.

Private Mining Business.

For the purpose of this report, we have grouped the lands, wells, well equipment and gas purchased from others, as constituting the private business of production of the commodity.

We have likewise grouped the operating expenses upon the same basis.

Public Service.

For the purpose of this report, we have segregated the gathering lines, compressor stations, man lines and city plants as constituting the public service investment. We have grouped the operating expenses upon the same basis.

Estimated Production for the Year 1922.

From a study of the records of past production and consultation with men familiar with the several gas fields, it was estimated that the production of your Company from all fields, would be 2,000,000,000 cubic feet for the year 1922.

Gas Purchased for the Year 1922.

It is believed that the amount of gas which would be purchased and delivered into the Company lines is 6,362,900,000 cubic feet. This would make a total of gas produced and purchased for the year of 1922 of 8,362,900,000 cubic feet. Of this amount, it is believed there will be available for domestic and industrial consumption, after making allowance for gas used in Compressor Stations and leakage in transmission lines and city plants of 6,918,900,000 cubic feet.

Estimated Consumption by Consumers' Districts for the Year 1922.

During the year 1921 there was consumed by domestic, industrial and miscellaneous consumers, including gas used by the Company in offices, Compressor Stations, leakage in main lines and in distributing plants of your Company and in the Cities of Hot Springs and Little Rock, a total of 7,669,230,000 cubic feet of gas.

For the year 1922, it is estimated that, for the same items, there will be required 8,362,900,000 cubic feet of gas.

The estimated annual gas sales in M cubic feet, including leakage, etc., for the year 1922 as compared with actual amounts for the year 1921 by consumers' districts, are as follows:

Name.	1921. Actual sales, domestic.	1922. Estimated sales, domestic.	1921. Actual sales, industrial.	1922. Estimated sales, industrial.
Little Rock.....	1,762,801	1,760,000	1,290,060	2,000,000
Hot Springs.....	495,264	500,000	606,493	700,000
Sub. totals.....	2,258,065	2,260,000	1,896,553	2,700,000

Name.	1921. Actual sales, domestic.	1922. Estimated sales, domestic.	1921. Actual sales, industrial.	1922. Estimated sales, industrial.	Advert Rate Adjust Bad Curren Insura
Pine Bluff.....	393,679	400,000	536,299	500,000	
Sheridan	17,605	18,000	.....	.....
Garland City.....	7,257	7,000	1,828	1,600	
Benton	56,920	57,000	77,516	100,000	
Malvern	56,098	58,000	238,746	300,000	
Arkadelphia	77,488	80,000	34,480	35,000	
Gurdon	30,181	31,000	3,927	4,000	
Prescott	45,287	45,000	3,727	2,000	
Hope	109,233	109,000	178,406	150,000	
Arkansas Sundry Towns in- cluding Fouke & Dodd- ridge	6,090	5,000	635	600	amoun
Sub. Total.....	800,438	810,000	1,075,564	1,003,200	Estim Estim
Louisiana Towns Including Ida, Oil City, Bonham & Vivian	12,800	10,000	602	700	Leaka Sta
Field Industrial.....	.....	.....	70,394	25,000	
Ark. Nat. Gas Co. Com- pressor Sta.....	.....	.....	187,661	187,000	
Youree Lease.....	.....	.....	19,455	20,000	
Sub. Total.....	12,800	10,000	278,202	232,700	Leaka Leaka Leaka
Grand Total.....	3,071,303	3,080,000	3,250,319	4,025,900	Sales, Sales,
Leakage :					
Little Rock.....	834,209	800,000			
Hot Springs.....	158,816	125,000			
A. N. G. Co. Plants.....	203,159	270,000			
Main Line Leakage.....	61,424	62,000			
	1,347,608	1,257,000			
	Actual, 1921.	Estimated, 1922.			
Domestic Sales.....	3,071,303	3,080,000			
Industrial Sales.....	3,250,319	4,025,900			
Leakage	1,347,608	1,257,000			
	7,669,230	8,362,900			

281 We must next apportion the estimated expenses for the year 1922 between Production, Transmission and Distribution as follows:

	Production.	Transmission.	Distribution.	Total.
Production	\$351,000.00	.....	.....	\$351,000.00
Gas Purchased....	409,588.50	.....	.....	409,588.50
Transportation .....	.....	\$75,000.00	.....	75,000.00
Compressor Sta- tions .....	.....	135,000.00	.....	135,000.00
Distribution .....	.....	.....	\$90,000.00	90,000.00
Telephones .....	.....	19,000.00	.....	19,000.00
General Misco- laneous and Taxes	16,200.00	145,300.00	62,229.00	223,729.00

	Production.	Transmission.	Distribution.	Total.
Advertising and Rate Case.....	11,666.66	11,666.67	11,666.67	35,000.00
Adjustments and Bad Accounts...	.....	.....	10,000.00	10,000.00
Current Interest..	4,666.66	4,666.67	4,666.67	14,000.00
Insurance .....	.....	6,000.00	3,000.00	9,000.00
	<hr/>	<hr/>	<hr/>	<hr/>
	\$793,121.82	\$396,633.34	\$181,562.34	\$1,371,317.50

282 We must next show the amount of gas produced, the amount of gas delivered to the town border gates, and the amount delivered to consumers' meters as follows:

Estimated Gas Produced	2,000,000 M Cu. Ft.
Estimated Gas Purchased	6,362,900 M Cu. Ft.
	<hr/>
Total Produced and Purchased....	8,362,900 M Cu. Ft.
Leakage Main Lines and used in Compressor Stations	249,000 M Cu. Ft.
	<hr/>
Gas Delivered at City Gates.....	8,113,900 M Cu. Ft.
Leakage, Little Rock	800,000
Leakage, Hot Springs	125,000
Leakage A. K. N. G. Co.,	270,000
	<hr/>
	1,195,000 M Cu. Ft.
	<hr/>
Total Gas Sales	6,918,900 M Cu. Ft.
Sales, Hot Springs and Little Rock	4,960,000 M Cu. Ft.
Sales, Company's Own Plants	1,958,900 M Cu. Ft.

We next find the unit price per 1,000 cubic feet which should be charged for gas produced, delivered at the town border gates and delivered at the consumers' meters as follows:

283 *Estimated Gross Income Required for the Year 1922.*

Estimated Production Expenses.....	\$793,121.82
Return on Investment (\$1,999,337.40) 7%.....	139,953.62
Risk Incident to Business (1,999,337.40) 3%....	59,980.12
Return of Capital to Shareholders (1,969,337.40)	
10%	196,933.74
	<hr/>
Sub-total	\$396,867.48
Gross Income Required for Production.....	\$1,189,980.30

Rate per M cubic feet required for Production is 118,098,930 cents divided by 8362,900 M cu. ft. or 14.23 cents per M cubic feet.

Transmission—A Public Service:

Estimated Transmission Expense.....	\$396,633.34
Return on Investment (\$5,269,948.90) 7%.....	368,896.42
Risk Incident to Business (\$5,269,948.90) 3%.....	158,008.47
Return of Capital to Shareholders (\$4,829,948.90)	
10%	482,904.89

Sub-total	\$1,009,989.78
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Gross Income Required for Transmission.....	\$1,406,623.12
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Rate per M cubic feet required for Transmission is 140,662,312 cents divided by 8,113,900 M cubic feet or 17.34 cents per M cubic feet.

Distribution—A Public Service:

Estimated Distribution Expense.....	181,562.34
Return on Investment (\$1,135,008.57) 7%.....	79,450.60
Risk Incident to Business (\$1,135,008.57) 3%.....	34,050.26
Return of Capital (\$975,008.57) 10%.....	97,500.86

Sub-total	\$211,001.72
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Gross Income Required for Distribution.....	\$392,504.06
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Rate per M cubic feet required for distribution is 39,256,406 cents divided by 1,958,900 M cubic feet or 20.04 cents per M cubic feet.

284 Town Border Rate (Production and Transmission) 31.57 cents per M cubic feet.

Consumers' Rate (Production, Transmission and Distribution) 51.61 cents per M cubic feet.

The above suggested rates are made without regard to a separate classification of its use between industrial and domestic use. If such classification is made and less rates than the above are made for gas for industrial use, then there must be charged a corresponding increased rate for gas used for domestic purposes.

If we apply these required rates to your situation in case you are permitted to charge the rates at present contemplated, we find as follows:

For the domestic gas sold in Hot Springs and Little Rock on a contemplated city border rate of 35 cents per M cubic feet you will gain the difference between 35 cents and 31.57 cents, or 3.43 cents per M cubic feet on an estimated sale for this use of 2,260,000 M cubic feet, or..... \$77,518.00

But the contemplated city border rate in these towns provides for the payment to your Company of leakage, making an additional gain of 3.43 cents on estimated leakage of 925,000 M cubic feet, or..... 31,727.50

For the domestic gas sold in the plants of your Company at the contemplated rate of 65 cents per M cubic feet, you will gain the difference between 65 cents and 51.61 cents, or 13.39 cents per M cubic feet on an estimated sale for this use of 820,000 M cubic feet, or... 109,798.00

Or a total gain on all domestic gas sold of..... \$219,043.50

285	For the gas sold for industrial use in Hot Springs and Little Rock at the contemplated rate of 25 cents per M cubic feet, of which you will receive 18.75 cents per M cubic feet, you will lose the difference between 31.57 cents and 18.75 cents or 12.82 cents per M cubic feet on an estimated sale of 2,700,000 M cubic feet, or.....	\$346,140.00
	For the gas sold for industrial use in the plants of your Company at the contemplated rate of 25 cents per M cubic feet you will lose the difference between the consumers' rate of 51.61 cents and 25 cents, or 26.61 cents per M cubic feet on an estimated quantity of 1,094,000 M cubic feet, or.....	291,113.40
	Making a total loss on industrial business of.....	\$637,253.40
	Summarizing, we find:	
	On domestic sales a gain of.....	\$219,043.50
	On industrial sales a loss of.....	637,253.40
	Or a net loss to your Company of.....	\$418,209.90

So if your Company were permitted to charge the contemplated rates you would still lack \$418,209.90 in revenue to which you are justly entitled.

In conclusion it should be noted that our estimated consumption of industrial gas was based upon the expectation that business would revive in this territory during this year.

If it should not do so, a higher unit rate would be required.

ANDERSON & TAYLOR,
By J. K. ANDERSON.

Shreveport, La., February 28th, 1922.

286 "I have always considered that the matter of production and handling gas was a private business and it should be so considered and handled, and that the transmission and distribution of your gas is a public service, in the same way that the mining of coal and ore and other minerals is clearly a private business, while its transportation by rail or pipe line is clearly a public service. That is the reason for making that division of the properties into three departments, production, transportation and distribution.

Question. "There is only one question I wish to ask you in connection with your report. What is the situation as to the source of supply in that territory? I don't mean to go into detail, but what is the general situation?"

Answer. "The sources of supply are limited, in my judgment, so far as known probably not over five years, at an annual demand estimated to be about twenty-three billion cubic feet of gas required every year by all the utilities and concerns who draw on this field."

"The Arkansas Natural Gas Company, if it keeps up its continuity of service, will be compelled to engage in an active drilling and

prospecting campaign. As the gas becomes depleted it requires more wells to get the same quantity of gas, and results in an excessive operating cost.

Cross-examination:

I was Appraisal Engineer of the West Virginia Commission about six years. Since 1919 I have been engaged in private work. I believe that the value of this gas intrinsically is far above the selling price these people are selling it. It is a very valuable fuel, and I felt like this heritage of the Heavenly Father was being spent by us like drunken sailors. I think all of this gas is being sold too cheap. I testified before the Corporation Commission at the hearing about a year ago, in 1921; prices then were very much higher than now. I placed a valuation on the property for rate-making purposes at

\$7,500,000.00.

287 The way I did it was this: I had to come here and serve the company on very short notice, and on my arrival I found I couldn't obtain a really accurate basis, and the only thing I could do was to take their book value as to the value of their leases. The first five and a half million dollars I reduced that to two and a half million at a rough guess, as about the actual value, and after allowing depreciation which the company had set up I prepared a rate study on that basis that would leave the value of the property as five million dollars, to which was added two and a half million dollars for leases. I do not know whether the steel prices in the appraisal are below the five year pre-war prices or not. I don't happen to have the five year pre-war prices with me, and did not compare it. I wouldn't feel myself competent to testify as to common labor in this vicinity; I don't know its cost. In figuring depreciation I gave the expected life of the plant some consideration, and then the condition of maintenance was another matter which we gave consideration. I understood all of the pipe was steel pipe, except the Pine Bluff distribution plant. There is a difference of opinion of the authorities as to the probable life of steel pipe; some of them say as much as sixty years, and some of them twenty-five years. I must confess that when I first went with the West Virginia Public Service Commission I had in mind twenty-five years, but a few years after that I was confronted with the fact of certain pipe being in there for twenty-five years and being as good as new, practically, and I was forced to modify my previous opinion very materially, and I am inclined to think it would be at least fifty years, and nobody really knows how long a time it would last; that depends upon the character of the soil and its surroundings. There have been some few cases where pipes were laid in cinder banks where they have been eaten up very rapidly. In my experience in West Virginia low or wet soil has not apparently deteriorated the pipe; it depends upon the kind of water; I do not know about the waters in this country. I didn't use any particular phase of life of steel pipe in fixing depreciation of this plant, except we figured roughly this pipe would probably last fifty years or longer. I don't know how long the gas will last. In an increase of price there will be a diminution in the amount used. I don't think there

would be any obsoleteness in this plant; it is managed by a very efficient management having many years' experience in the natural gas business and very excellent assistants in the handling of the departments. As to the De Soto compressing station I rather figure with the cessation of the supply of gas that they might possibly move that to some other field. I do not consider that that compressing station ceases from usefulness when that local field gives out. It is a tremendous guess how long the gas will last. I have adopted in this present rate study ten per cent. for return of capital to the shareholders. If the fields are depleted so that they can't supply the pipeline the pipeline would have a value only as junk, except for the possible finding of additional fields. I look on that plant as being a plant that would be supplying you people for years to come, and with proper rates given them, or proper rate-making basis adopted, they will be encouraged to go out and find new fields, and will find new fields. There is the Webster Parish field and they have a very wonderful well there; it is about forty miles from the Reserve pipeline and about thirty-five miles by the map from the main line of the Arkansas Natural Gas Company. In figuring depreciation I did not apply the life of the field direct to the plant. If you had only one known source of supply and there was no other available or to be had at any future time I think I would say that when your gas is gone, that being the heart of that business, that that plant then would be at the end of its life and it would only have a salvage value. If I was working out the value of a plant that had a five year life I would depreciate it accordingly, or would get at that depreciation by taking its entire life and finding out what remaining life it had; if it had a ten year life in the past and five years in the future I would depreciate it about sixty-six and two-thirds per cent.

Redirect examination:

"Mr. Anderson, do you mean for the purpose of returning the capital to the stockholders that you would depreciate it on the life of the field, or do you mean for the purpose of rate-making?"

Answer. "It would be for the purpose of returning the capital to the shareholders, and for rate purposes I would simply use the depreciated value of the plant, itself. I wouldn't apply that shortened term of life because of the failure of the gas field as a measure of the value of the plant for rate-making purposes."

Question. "You do that on the theory that the stockholders are entitled to a fair return on their investment on the last day the plant is operated?"

Answer. "Yes, sir. I feel that the shareholder in any public utility is entitled to a fair return on his invested capital, interest on that money, and a certain amount of profit, based upon the risk of loss, and to get his money back at the end of the expectant life, or, as a matter of fact, sooner than the end of the expectant life of the property. I think in any case where a definite known life of five or ten years exists depreciation for rate-making should be according to the physical depreciation."

(Witness testified in answer to questions propounded by the Court as follows:)

"Court: Mr. Anderson, let me ask you a question. Say a corporation opens a coal mine, which is estimated to have twenty-million tons of coal in it. The capitalized value of it is one million dollars. They mine a million tons a year, so that in twenty years it will be exhausted. Now, your position is this: They would be entitled to a reasonable interest on their investment—of a million dollars, and in addition to that five per cent. because at the end of twenty 290 years, that is five per cent. for capital, because at the end of twenty years the mine will be gone, and the mine will be worthless. Do you apply that to gas?"

Answer. "Yes, sir, I think you should give, or you should get your money back."

Question. "That should be added to the ordinary use, or interest for the use of the money? If the mine would run five years, they ought to get it back in five years, because the mine would then be useless?"

Answer. "Yes, sir. There is this exception, I would like to state for your honor's benefit, that applies to coal as to the production of gas. I believe that with the increasing value of the supply of coal and gas, you would be entitled to an increased amount on the value, based upon the increased of the value of the supply, of coal, or supply of gas. I think that is beyond question, that the owner of the property should be entitled to any increment of value that might accrue to that property."

Question. "You think that they are entitled to do just the same as a man who buys a piece of land and it increases in value?"

Answer. "Yes, sir."

"I feel that the Arkansas Natural Gas Company should have done considerably more drilling in the last year than they have done. I appreciate the fact that they were deterred somewhat by rate conditions, but I think it will be necessary for them to continue quite an active drilling campaign. In this rate study I figured on one additional well in the Elm Grove field and eleven new wells in the Bethany field as being a very reasonable amount of drilling for them to undertake this year as a matter of protection and taking care of the public service supply. In the Bethany field the company has considerable acreage and only one well, but other owners have large acreage and many wells, and if they don't drill other wells other owners will take the gas out from under the leases of the Arkansas Company. It is unfortunate that this competitive situation exists, from the public standpoint. It has resulted in extremely low prices of gas because of the competition in sales. Whether the 291 Arkansas Company's leasing programme has been judicious depends entirely on local conditions; some of the largest gas companies have several hundred thousand acres of land. They use what in the judgment of the management is the wisest selection of territory in reserve; they attempt to secure certain leaseholds as an insurance of the continuation of the supply. I can not say whether

your management has been wise, whether they have leased all they should have or whether they have not leased enough.

292 A. B. DALLY, JR., on direct examination testified:

I am one of the vice-presidents of the Company, and in July, 1910, I became General Manager of the Company and remained as its General Manager until 1915, when I was succeeded by J. R. Munce. I had been in the natural gas business 24 years preceding my connection in 1910 with the Arkansas Company. I resigned as General Manager of the Manufacturers Light & Heat Company of Pittsburgh to form the connection with the Arkansas Company. I had had experience in production, well drilling, line construction and operation through that period of 24 years. I am connected now actively with seven different natural gas companies. While I was still connected with the Manufacturers Light & Heat Company I visited northwest Louisiana for the purpose of making examination and report to Mr. J. C. Trees and his associates of the gas field that had been brought in known as the Caddo field. In my opinion, after my examination of it, the 10 wells and the gas leases and gas acreage acquired by the Arkansas Natural Gas Company under its purchase contract from Mr. Trees and his associates, under the plan of the Company's financing, was worth the amount of the common stock that had been issued against it of five and one half million dollars. I recommended the entire investment in the pipeline system based on the value of the Caddo field as I had gauged it and others with me.

Q. State what your opinion was at that time as to the character and extent of that field as compared with fields you were familiar with in West Virginia, Ohio, and Pennsylvania?

A. The flow of the wells was unusually large in volume, and the area of the gas development was very extensive—it was so extensive that I considered the field greater than any I had ever visited or been previously connected with in the eastern fields, and fully warranted the organization of this company. It was my estimate that the promise of the field made the common stock worth the value they had placed on it, five and a half million dollars, and the plan of financing it contemplated a bond issue so worked out on the theory of amortization, those bonds in ten years paying the investors their money back and having a good field left, sufficient to make the common stock full value as the capital of the company.

At that time there was no other known gas developments in Louisiana. My estimates and recommendations were prepared and based on the Caddo field alone and on the acreage the Arkansas Company had acquired from Trees and his associates, which amounted to about 102,000 acres, together with the ten wells having an open flow of over 300,000,000 cubic feet per day. The Bush-Everett interests were at that time actually contemplating the building of a line from the Caddo field to St. Louis, based upon the opinion as to the inexhaustible supply there. I was representing the Company during the time Booth & Flynn, Contractors, were constructing the pipeline system. I considered

and believe that the prices named in their contract were very favorable to the Company and that they would not have taken the contract without the million dollars of stock being a part of the consideration. That was stated at the time and was understood. The field began to decline very rapidly about the middle of the second year after we began operations. We built the De Soto compressing staion about 1913. We did not have money out of earnings to build it, and the necessary money was borrowed from the four principal stockholders of the Company under an agreement to pay them back a fixed sum per month until the loan was liquidated, about \$5,000.00 per month. When May 1st, 1913, rolled around we didn't have the money to retire a part of the bonds as the contract called for, and we proceeded to get an extension from the bondholders on the maturing date, and extended it to May 2, 1916. When May 2, 1916, rolled around we were in a little worse shape than three years previous. We were not only confronted by inability to take up the bonds, but were very much out of gas. We had the gas about worked out and we couldn't carry our peak loads that Winter. The re-financing became a necessity, and we divided the bonds into preferred stock and cut the drain on our income in two. It was done in the way of cumulative preferred stock. We took the money that we would otherwise have paid for interest and used it in development.

I am familiar with the situation now confronting the Company both in its finances and in its field development. The fields the Company are now operating in are declining very rapidly. Without having the figures before me, I believe the best fields we

294 have are two-thirds depleted,—possibly in a fair ratio the first two-thirds have gone out, and to relieve the situation we have gone into Panola County, Texas, and a line is being constructed in that field by the Reserve Company. I can't give an estimate on Panola County except to call your attention to the fact that a part of that field is showing a rapid decline. It is the only available nearby field that the Arkansas Company and the consumers have in sight to furnish a supply of gas other than a possible or probable field that may develop in Webster Parish on which the development work up to date has not been sufficient to define it as a gas field. We have to get the money to go to the Webster field, if it develops into a good field, from the earnings of the gas company. The stockholders will not furnish further money; they don't feel justified in further investment in gas properties because they have not paid. That is the feeling among the directors and stockholders. There has been I believe \$400,000.00 returned to the stockholders out of the original gas investment. That was returned in the redemption of bonds. We have had \$998,000.00 in additions and improvements to the property that came out of earnings. All the money we could get was re-invested in the maintenance and extension of the property as far as that would go. There was no return to the stockholders. It was absolutely necessary to do that or we would have been in so much the worse fix furnishing gas to these cities and towns.

Cross-examination:

Seventy or eighty thousand acres of the 102,000 acres were in Louisiana. The remainder of it was in Texas in Counties immediately adjoining the Oil City and Vivian districts of Louisiana. We made some development in the Texas acreage and surrendered it. We had but one contract with the H. C. Trees Oil Company about October 1909 and that related to Texas acreage. Part 25 of the acreage referred to came from the Trees Oil Company and part of it came from Grayson and some of the acreage came from the Barksdale interests, and we had some of the acreage from the Vivian Oil Company. There were different pieces of the acreage, which amounted to 102,000 acres. These were all in written contracts to the Arkansas Natural Gas Company. I would not think the contracts were recorded. The part on which we actually made the stock issue of five and a half million dollars was strictly for gas rights. The J. C. Trees contract might have had the feature that the Gas Company should pay the carrying charges on the leases, and if in their drilling they brought in an oil well it should be the property of the oil company at the cost of the drilling, and, on the other hand, if the oil company brought in a gas well it should be the gas company's; that is the custom. These leases came to the Company before I was connected with it. I was not with the Company when this acreage and the 10 wells were acquired.

I was not present when the contract with Booth & Flynn for constructing the system was made. I don't know that there was a profit in the prices stated in their contract. I think the profit was figured up by Booth & Flynn in the stock they get. There was quite a list of the original bondholders of the Company,—Benedum & Trees, Booth & Flynn, Grayson, that crowd, the Benedum-Trees Oil Company and Booth & Flynn were large bondholders. Booth & Flynn were not in the J. C. Trees Oil Company. After selling the gas rights to the Arkansas Company the J. C. Trees Oil Company sold all the oil interest in that acreage to the Standard Oil Company for a large sum of money.

Redirect examination:

296 It has not only been customary for the gas company to pay the rental for holding acreage, but by agreement we carried the oil rights on several thousand acres belonging to other individuals and paid the rental and in that way protected our interests.

Evidence Introduced in Behalf of Defendants.

W. T. FEILDS, on direct examination, testified:

I am a consulting and constructing engineer and have followed my profession for 16 years. (Witness then qualifies as an expert mechanical engineer.) I have never taken a trip over the Arkansas Natural Gas Company's pipe line. I have been all up and down the

line and noted the conditions in the various towns and counties where the line passes through. I never measured the pipe line; I took the Arkansas Natural Gas Company's measurements for that as to quantities. I went to their compressor plants and out to the fields. We did not go into any detailed account, we just took the figures they gave us and used them accordingly. I noticed the character of the country through which the pipe line is laid. We did not look at all of the wells. Mr. Fordyce and I went together, and I was associated with him under the firm name of Fordyce & Feilds.

I prepared for the foregoing years an estimate of costs new and depreciated according to the probable life of the gas fields, the cost now being based on the five years pre-war prices. The item of lease values on that sheet is estimated to a large extent on the cost of their leases in the territory adjacent to the pipe line. The figure is \$169,000.00. I have made another estimate of the reproduction new of the plant according to the present prices and depreciation showing the depreciated value. I filed the first estimate of a year ago as Exhibit "A"; the second estimate of present value as Exhibit "B." The estimates are as follows:

(Here follows Exhibit A, table of comparative values, marked page 297.)

EXHIBIT A TO FEILDS.

Items.

Production:

	25 years total life.			20 years total life.			15 years total life.			Reproduction cost, new.	Reproduction cost, new.	Reproduction cost, new.
	Values based on present physical condition and a remaining life of the plant as 15 years.			Values based on present physical condition and a remaining life of the plant as 10 years.			Values based on present physical condition and a remaining life of the plant as 5 years.			Priced as of Nov. 1, 1920.	Priced as of Jan. 15, 1921.	Priced as of June 1, 1921.
	Cost, new.	% cond.	Present value.	Cost, new.	% cond.	Present value.	Cost, new.	% cond.	Present value.	Inventory, Nov. 1, 1920.	Inventory, Nov. 1, 1920.	Inventory, Nov. 1, 1920.
Lease Holdings (Estimated).....	169,000	60	101,400	169,000	60	101,400	169,000	60	101,400	169,000	169,000	169,000
Field Lines, Bossier Field, (Estimated).....	60,000	66.6	39,960	60,000	66.6	39,960	60,000	66.6	39,960	78,000	72,000	64,800
15 Gas Wells, Caddo Field—shallow, @ 5,000.....	75,000	20	15,000	75,000	20	15,000	75,000	20	15,000	190,000	190,000	120,000
14 Gas Wells, Bossier Field—shallow and deep, @ 20,000:....	280,000	66.6	186,480	280,000	66.6	186,480	280,000	66.6	186,480	350,000	350,000	168,000
De Soto pumping station, Age, 7 yrs. (Life 25 yrs.).....	122,880	72	88,473	122,880	65	79,872	122,880	53	65,126	276,000	196,608	176,555

Transportation:

Right-of-way	58,000	60	34,800	58,000	50	29,000	58,000	33.3	19,314	58,000	58,000	58,000
Rogers Compressing Station, Age 8 yrs. (Life 25 yrs.).....	308,000	68	209,440	308,000	60	184,800	308,000	47	144,760	685,000	492,000	445,250
Main Pipe Lines, from De Soto Station to city gates, age 10 yrs., (life 25 yrs.).....	4,038,248	60	2,422,949	4,038,248	50	2,019,124	4,038,248	33.3	1,344,736	8,832,391	7,419,126*	6,223,140
Main Line Meters and housings for same (estimated).....	10,000	50	5,000	10,000	50	5,000	10,000	50	5,000	20,000	18,000	15,000

Telephone System:

275 miles private telephone lines.....	89,375	50	44,687	89,375	50	44,687	89,375	33.3	29,762	160,874	134,062	107,822
Distributing Plants, Including Caddo field lines, age 8 yrs. (Life 20 yrs.)	703,500	60	422,100	703,500	60	422,100	703,500	47	330,645	1,097,460	914,550	777,367
Automobiles and trucks—\$34,000—½ of amount for gas business.....	17,000	50	8,500	17,000	50	8,500	17,000	50	8,500	17,000	17,000	13,600
Office Headquarters—\$30,000—½ of amount for gas business.....	15,000	85	12,750	15,000	85	12,750	15,000	65	12,750	20,000	20,000	16,000
Warehouses—Buildings only, \$15,000—½ of amount for gas business.....	5,000	90	4,500	5,000	90	4,500	5,000	85	4,250	5,000	5,000	4,000
Totals	5,951,003	61	3,596,039	5,951,003	53	3,153,173	5,951,003	39	2,307,683	11,958,725	10,055,346	8,358,534
Omissions	150,000		90,750	150,000		79,500	150,000		58,500	300,000	270,000	175,000
Totals	6,101,003		3,686,789	6,101,003		3,232,673	6,101,003		2,366,183	12,258,725	10,325,346	8,533,534
Construction engineering costs, overhead, 12%.....			442,415			387,921			283,942	1,591,047	1,239,041	1,024,024
Total value			4,129,204			3,620,594			2,650,125	13,849,772	11,564,387	9,557,558
Working capital			150,000			150,000			150,000			
Grand totals			4,279,204			3,770,594			2,800,125			
(Estimated salvage value) \$500,000+working capital—deduct for rate base			650,000			650,000			650,000			
Rate base			3,629,204			3,120,594			2,150,125			

NOTE.—To provide a sinking fund to return the total value to the stockholders the rate base is taken for calculating same; for rate base + salvage value equals total value. The sinking fund will earn interest at the rate of 5% on one half the rate base for the remaining years of life of the plant. The total interest earned deducted from the Rate Base gives the total amount of sinking fund needed. The amount obtained divided by the number of years of remaining life gives the amount to set aside each year to amortize the plant in order to return the investment at the end of the expectant life.

Rate base	\$3,629,204	Rate base	\$3,120,594	Rate base	\$2,150,125
Interest, 5% on ½ of Rate Base for 15 yrs.	1,360,952	Interest, 5% on ½ of Rate Base for 10 yrs.	780,149	Interest 5% on ½ of Rate Base for 5 yrs....	268,765
Sinking Fund—4.16% or \$151,883 yearly for 15 years	2,268,252	Sinking Fund—7½% or \$234,044 yearly for 10 years	2,340,445	Sinking Fund—17½% or \$376,272 yearly for 5 years	1,881,360
			\$3,120,544		\$2,150,125

Rate of Return.	Rate of Return.	Rate of Return.
Return on capital..... .08	Return on capital..... .08	Return on capital..... .08
Return for sinking fund..... .042	Return for sinking fund..... .075	Return for sinking fund..... .175
Rate of Return .. .122	Rate of return.... .16	Rate of return... .255

$$12.2\% \text{ of } \$3,629,204 = \$442,762 = \text{yearly income.}$$

$$16\% \text{ of } \$3,120,594 = \$499,295 = \text{income.}$$

Interest 5% on ½ of Rate Base for 5 yrs....	268,765	JOHN R. FORDYCE, Engineer,
Sinking Fund—17½% or \$376,272 yearly for 5 years	1,881,360	W. TERRY FEILD, Associate Engineer,
		Little Rock, Arkansas.
		After sheet of Feb. 2, 1921, June 13, 1921.

*Error in former sheet item was 7,360,326.

Valuation of the Properties of the Arkansas Natural Gas Company.

Inventory as of Nov. 1, 1920.

Prices as of Mar. 1, 1922.

Items.	Prices as of Mar. 1, 1922.	New cost.	% cond.	Present value.
Production:				
Lease Holdings.....	\$169,000	50	\$84,500
Field gathering lines Bossier Field (estimated)	60,000	60	36,000
15 Gas wells, shallow, Caddo Field.....	105,000	10	10,500
14 Gas wells, Bossier Field (shallow and deep)	168,000	60	100,800
De Soto Pumping Station, age 9 yrs., life 25.....	163,650	32	52,368
Useful in present location limited to life of Caddo Field				
Transportation:				
Right of way.....	58,000	100	58,000
Rodgers Compression Station (age 10 yrs., life 25)	437,000	60	262,200
Main pipe lines from De Soto Station to city gates, age 12 yrs., life 25.....	4,791,139	52	2,491,392
Main Line Meters, and housing for same.....	15,000	80	12,000
275 miles private telephone lines.....	95,000	40	38,000

Valuation of the Properties of the Arkansas Natural Gas Company.—Continued.

Distribution:	Items.	New cost.	% cond.	Present value.
City plants and Caddo Field Lines	725,000	60	435,000	
Automobiles (estimated)	13,600	40	5,440	
Office Headquarters (estimated)	16,000	80	12,800	
Warehouse, gas portion (estimated)	6,000	85	5,100	
		—	—	—
Omissions and Contingencies	6,822,419	53	3,602,100	
	150,000	53	79,500	
Total	6,972,419	53	3,681,600	
Overhead, construction, engineering costs 12%	836,690	53	441,792	
		—	—	—
Total			4,123,392	
Working Capital			200,000	
Total			4,323,392	
Going Value			300,000	
299 Grand Total			4,623,392	
Base for return on invested capital		\$4,623,392		
Return 8%		.....	.....	\$369,871
Salvage value of plant		\$600,000		
Working Capital to be returned		200,000		
Amount unamortized		800,000		800,000

Basis for sinking fund to amortize investment.

Interest Earnings on Sinking Fund Base:	
5% on half the base for remaining life, 13 yrs, .05 x 3823,392 equals	95,584.80
13 x 95584.8 " "	1,242,602.00
Base for sinking fund.....	3,823,392
Interest earnings.....	1,242,602
<hr/>	<hr/>
Amount to amortize.....	2,580,790
2580790 equals 198,521	
<hr/>	
13 equals yearly charge for sinking fund	
13 equals 4.29% of base for return of invested capital	
Annual Charges on Capital Invested:	
Base	4,623,392
8% return on capital invested unamortized	369,871
4.29% " " base for sinking fund.....	198,521
<hr/>	<hr/>
12.29 + % of Base, \$4,623,392 equals.....	568,392

300 My values as shown on this present time estimate are not materially different from the values introduced by Mr. Kramer, with the exception of leases. I have quite a difference there on the leaseholds, and I have some small items different, for instance, for the pipeline and the Rogers compressor station. I had a smaller item for the De Soto compressor station, for the new cost, and that is the largest difference. The price of steel today is just about pre-war level. Labor is approximately 20 per cent higher in this vicinity. The quotations we get here wouldn't be pre-war level on heavy machinery, but it would be I would say 50 per cent higher for the reason that the plants in the east, manufacturers, are working 25 to 40 per cent capacity. Now these plants all have large overhead, and anything they produce at this time necessarily must cost them more than at other times, but should business revive and they get to capacity their cost will be lower and put their output cheaper. I have shown in my second estimate, Exhibit "B," leasehold values at \$169,000.00 and have depreciated them 50 per cent. I took the leases over in Louisiana close to the pipeline. The leases in Arkansas,—there is quite a few counties would take a large outlay of money to reach them—and the cost of them I have excluded. I have taken the leases in the counties of Arkansas near the pipeline and have depreciated them 50 per cent. From what I know of conditions there has been quite a number of dry wells drilled, and the average oil and gas lease which is offered or sold by lease speculators is 50 per cent less. I depreciated the main pipeline 48 per cent. We valued not only the physical depreciation but depreciated for functional causes.

We have given this line a life of 25 years, and using the straight line depreciation for that estimated life would bring that 48 per cent depreciation or 52 per cent condition. It is ordinarily considered by appraisal engineers that an average life of 25 years is all you can expect of steel pipe. If you buy charcoal pipe or iron you get something better. I would not take the position, only for functional causes, that the pipeline is only 52 per cent of its valuation. It would be folly on my part to do that because this line will be renewed from time to time as parts give way, and there will be some parts that are new and some parts that are older. The physical appearance of the pipe will undoubtedly be better. In other words, the depreciation for physical condition will not be a straight line; it will be more horizontal and then drop off as the pressure begins to break through. But for the life of the field and the general life of the plant it is considered by engineers that 10 year life is a good fair life to figure for that depreciation. In other words you ought to get your money back in 10 years on account of the fields possibly being exhausted and the line will have to be shifted and you go to other fields. This is caused by the character of the business,—functional causes, we call it. We think the company should be amortized in 10 years. I based my calculations on a longer life of the fields down here and what conditions have shown. I used the 25 years' life to carry out my depreciation on a straight line from that. This appraisal I fixed has practically 13 years to go. In making my calculation of rate of return I have used 13 years of remaining life.

Take the De Soto compressing station; I have it as 32 per cent condition. I arrived at that in this way: I used \$40,000.00 as the salvage value of the plant and subtracted the \$40,000.00 from \$163,680.00, and depreciated the value at 10 per cent and got that figure, there, which gave \$12,000.00, and then added the \$40,000.00 to that. Then by taking my percentage there of it, showed 32 per cent physical condition now. That plant is in a field where the gas is all gone from and undoubtedly will have to be moved to be
302 worth anything in the operation of the whole line. So if they had to move it to some other point they would naturally have to leave their foundation, a large part of it, there. The end of that field where the De Soto compressing plant is located is in sight.

As to the Rogers compressing station, it is necessary for the operation of the pipeline. The pressure there is boosted up to the pressure necessary to send it through the line. I gave that a 25 year life. On large gas engines of that character the depreciation is generally 8 per cent a year, but I just took my 25 year life and the age of the plant and depreciated it sixty per cent condition. I inquired of the engineer in charge and he told me the cylinders had been bored a number of times. Twenty-five year life is all that we ever place on machinery of that character—12 of that gone and 13 remaining. We got the 60 per cent that way. The steel pipeline itself is figured on the 25 years life of the whole plant and the gas fields back of the plant. We have 12 years life gone, 13 years remaining, that is my judgment. If we can get 10 years further gas we will be very lucky in view of the depletion. In the low grounds where the acids in the ground are greater, the life of the pipe is shorter than it would be in the hills. You take as you come up along Hempstead and Nevada Counties you have hills and clay soil, and you will find the line in better condition than you will find it in the low, flat country. When you get to Perla you have good condition. South of Hope you come into flat woods and down in Louisiana it is flat and hilly too. I believe this pipeline would stand 25 years anywhere in the line. I would like to be understood that I would want to consider the pipeline depreciated as the fields are gone and not entirely for physical condition, because if these fields are gone in twelve years there will undoubtedly be good pipe in the ground that could be used somewhere else. I was estimating that there
303 would be no renewed pipe, but there would be some pipe there that can be used, but whether any company would lay it or that would use pipe that has been in the ground 25 years. They wouldn't go to the expense of hauling pipe that is that old. So you would probably get your salvage value out of it only, even though there would be some pipe in the line.

Cross-examination:

It is hard to answer right off-hand what decline there has been in steel and labor entering into the cost of constructing the main line or distributing plants between June 1, 1921, and March 1, 1922. The decline would apply more on the large sizes of pipe than on the

small. I didn't get the difference in quotations between January 1, 1921, and June 1, 1921, and March 1, 1922, on small pipe such as is used in distributing lines, that is from eight inch to one-half inch pipe. I had no inventory on the distributing plants. The price I have on March 1, 1922, on large 18 inch pipe f. o. b. Shreveport and Little Rock points, to which the same freight is applied—plain end pipe—is \$3.55 per foot. June 1, 1921, I used a price of \$4.50 for the same pipe, not in place but simply delivered at Little Rock and Shreveport. I would like to explain that my quotations are not in a position, like I would have obtained, had I represented as coming from a company going to work to construct a pipeline carrying trainloads of pipe. My calculations are based upon \$3.55 against the Arkansas Company's \$2.54. I have higher unit cost on my pipe because I got that from Crane & Company. I fixed a difference of 95 cents in price on large pipe June 1, 1921, and March 1, 1922. That would be a decline from the June 1st price of 26 and a fraction per cent. I made a valuation on June 1, 1921, shown on the righthand end column of blue print Exhibit "A" in which I figured the reproduction cost of the main pipeline from the De Soto station to the city gates at \$6,223,140.00, while on the Exhibit "B" now filed, fixing the valuation as of March 1, 1922, I valued said main pipeline at \$4,791,139.00. On my valuation of June 1, 1921, extreme righthand column of Exhibit "A," I fixed the value of distributing plants at \$777,367.00. On Exhibit "B," March 1, 1922, I fixed the reproduction value of distributing plants at \$725,000.00. The distributing plants have a larger number of smaller installations and there would be a larger overhead on it than in the pipeline. I have not applied 25 per cent decline in pipe to the distributing lines. I have estimated the value of the distributing plants largely on the price per customer.

Q. But if they (the distributing lines) cost less to put in now than on June 1st last, why not make a larger reduction on that price?

A. Distributing plants are not put in in large jobs like main lines are.

In my reproduction cost, Exhibit "B," as of March 1, 1922, I fixed the reproduction cost of the main pipeline at \$4,791,139.00, while Mr. Kramer fixes the reproduction cost of the main pipeline at \$4,053,348.32. In fixing the present day value I applied a 48 per cent depreciation to the main pipeline, and admit that said depreciation is on the basis that the pipeline will not be used to supply gas at the end of 25 years life (13 years to run).

I have depreciated the telephone line 60 per cent. All the telephone lines have certainly got much larger depreciation than they (Kramer and Anderson) stated. I understand they have no telephone lines at all now, but I have no inventory today, and I was told that the telephone line mileage was 275 miles and I used it because it was the inventory that I had. Now my judgment is the line is not worth \$95,000.00. I didn't count the number of poles, the miles of wire and the cost of labor for construction. That is

largely an estimate. I didn't know when I made the estimate that the Company had just finished reconstructing the entire telephone line. I didn't know that they had transferred 112 miles of their telephone system to the Western Union poles, so they would have no pole depreciation there. I didn't know their insulation had been put on new. Mr. Kremer gave me his records and I took and checked it when I went to the plant (compressing plant). I got my opinion of the condition of the plant from talking to the men that were there. Two years ago it was in A No. 1 condition. I didn't know they had relined all of the cylinders at these compressing plants, at the Rogers and De Soto stations.

Q. Don't you know, Mr. Feild, that they are keeping up the physical condition of this plant (compressing plant) by replacements from year to year as required in their machinery?

A. I gave them \$25,000.00 as spare parts on hand. Presumably they do; they have to. If they were in a position of a street railway or electric company I wouldn't put that depreciation that low at all. The depreciation here on "functional causes," assuming that our gas down there is gone, which in my judgment if we get 13 years out, we will be lucky; that will be about the condition down there.

Q. When you speak of "functional conditions," you don't speak of the compressing stations and lines ability to function?

A. No, sir, we can't consider obsoleteness in a plant of that kind. There is nothing better in that line. That is good now, and the only other cause there would be, would be the life of the wells or gas fields, and if that is gone it is just what you can get for it to sell it, or to move it somewhere else. Its value would be just the salvage value.

Q. When you speak of functional conditions, you don't mean the line not performing the function for which it was constructed, but you mean the expiration of the field from which the gas was secured?

A. Absolutely.

Q. So your depreciation is based on practically all of the items, on an expectant life of the field of 13 years?

A. Absolutely.

Q. And your depreciation is not a physical depreciation, upon the physical condition of the property, or measured by the functional condition of the property itself?

A. No, sir, it is not.

Q. I have understood you to say you found it one of the best constructed and most efficient plants you have examined.

306 A. Yes, sir; I would like to compliment the management on it. It is one of the best I ever saw.

Referring to Exhibit "A" again, taking the double column under the head "Twenty Years Total Life," I worked out the present values based on present physical condition and the remaining life of the plant as 10 years. Under the column "Cost New," in which I found the cost new to be \$6,101,003.00, I used pre-war prices, or rather that was my estimate of the pre-war conditions. I found a reproduction cost of average prices of the pre-war period of \$6,101,003.00

without any construction overhead. Adding 12 per cent or \$720,000.00 for construction overhead, the reproduction cost on pre-war prices would be \$6,720,000.00. I allowed \$300,000.00 for going concern value, that is, I allowed that on Exhibit "B" in my valuations of March 1, 1922, but did not allow it on Exhibit "A." Exhibit "A" as made up did not carry in any of the tabulations going concern value. We allowed a working capital on Exhibit "B" of \$150,000.00. To get at the rate based on the 20 year life I took the reproduction cost on pre-war basis of 6 million dollars without adding construction overhead and gave it what we call functional depreciation because of the life of the field and added my 12 per cent construction overhead to the depreciated value and then \$150,000.00 for working capital. Then I deducted the salvage value and the \$150,000.00 working capital so as to find on the 25 years plan the fair value of the property as a rate base to be \$3,629,205.00. Mr. Whitlow and I had a controversy about including working capital and deducting salvage, but I saw afterwards that the return should be on the capital before any salvage was taken away. I got the present fair value by deducting from reproduction cost the depreciation estimated solely on the future life of the property, and thus getting the depreciated value, used it for the rate base. There was not included any going concern value at all.

Turning to the extreme righthand column Exhibit "B,"
307 Reproduction Costs New, on prices as of June 1, 1921, I show
the reproduction cost to be \$9,557,558.00. Now if you add
to that my estimate of \$150,000.00 for working capital and \$300,
000.00 for going concern value you have a valuation of \$10,007,
558.00 as the value as of June 1, 1921. I valued on June 1921,
the De Soto compressing station plant, extreme righthand column
of Exhibit "A" at \$176,555.00, and I valued it on Exhibit "B" as
of March 1, 1922, at \$163,680.00, or just a difference of \$13,000.00.
I valued the Rogers station, Exhibit "A," June 1, 1921, at \$445,
250.00, and on Exhibit "B," March 1st, at \$437,000.00, a difference
of only \$8,250.00. In other words, I reduced the value of the large
station, the one that ran into a great deal of material, only \$8,000.00
reproduction cost between June 1st last year and March 1st this
year, while I reduced the reproduction cost of the smaller station
\$13,000.00.

Q. Was there anything in the world you did, except sit down
and guess at these figures?

A. I don't call it guessing it at all. I have had experience in
doing this. Those are my figures and I stand up to them.

I valued the lease holdings at \$169,000.00 on both Exhibit "A"
and Exhibit "B." I have here a sheet from Mr. Wyer's report, I
believe, on the leases in Louisiana and Arkansas. I compared them
with the parishes in Louisiana that were adjacent to or near the
pipeline, such that an extension to reach them wouldn't be very
much, require excessive capital account, or could be done through
the finances of the company, and the parishes which I excluded
are Caldwell, Grant, Jackson, La Salle, Lincoln, Morehouse, Natche-
toches. In Arkansas I excluded I excluded Arkansas, Ashley,

Bradley, Calhoun, Cleburne, Cleveland, Drew, Desha, Sevier, Union and White counties. I gave the values of the parishes and the counties near the pipeline which Mr. Wyer shows were paid for the leases, that is, the bonuses paid to get them amounted to \$169,000.00. I didn't see any leases for which the company did not pay a bonus but only paid an annual rental. I do not know what it would cost the company now to get leases over in Bossier Parish where the company is operating 10 wells, but I know where you get oil and gas you pay handsomely for leases. They go up if you sell them. I just gave the \$169,000.00 estimate of the leases and didn't take into consideration their speculative value.

The witness testified upon examination by the court as follows: Where the company had producing gas wells I considered largely the cost of obtaining these leases rather than what they are worth today,—that is my contention. I have a value of \$26,000.00 for the 1,623½ acres in the Elm Grove field upon which wells are being operated. I base that value on the cost paid for the leases. If I was going in there today and purchase that acreage I would consider \$100.00 an acre a fair price for that land if I had to go there now and buy it with the possibility—right now—that it would have to be depreciated because that field is becoming exhausted.

Direct examination continued:

The acreage under lease for gas purposes where there was no development behind it or not enough to it to fairly determine its character I did not consider at all. They were far away from a well and they may discover oil there and lose all the gas. If they find oil in the region the gas is gone very quickly, so that is how I got this value. I gave no value to any acreage except the producing and the producing acreage I have at cost as I have been able to learn it through information we had from previous years. I made the statement that I copied my values from Mr. Wyer's report. His report does not show bonuses paid on operated acreage.

Q. Take the bonus values on leases. I will ask you to turn here and see if that is not under Mr. Wyer's reserve gas leases in Louisiana, Bossier Parish property, leased, showing rentals and bonuses?

A. No, I understand your bonus is what you paid for it.

Q. You say you valued only the operated stuff, and you produce a memorandum, and I ask you if that is a memorandum copied from Mr. Wyer's Louisiana reserve acreage as shown by his book?

A. I would like the court to be perfectly clear on the way I got this. I stated before this is largely an estimated quantity, this figure on the acreage here. I always considered that an operating expense in buying this acreage and did not consider it was a fair way to capitalize the increased value that came on the discovery of oil or gas or something, and I arbitrarily put a figure in my appraisal of \$169,000.00 and checked that up with what I got on

the leases, which I counted in the counties near the pipeline, which I assumed they paid for them.

Q. Yes, but that was reserve acreage?

A. If that was only reserve acreage, and you have more, this figure would necessarily speak for itself, that it is too low, and I wouldn't want to say it wasn't because it was an arbitrary figure I placed in here, but I was told this was the acreage they owned in Louisiana.

Q. Did you undertake to put that value on the acreage until Mr. Wyre had testified and filed his exhibit before the Railroad Commission.

A. I have never used anything out of the book at all.

Q. How did you get the data you have there on that sheet.

A. Mr. Loughborough (counsel for Consumers) furnished that to me.

Redirect examination:

"This figure of \$169,000.00 is what I understood was the cost paid for the acreage. That figure corresponds with the blueprint I used at the last hearing and is the same figure I carried forward to this. I never did get a description of the location of the leases; they were not available."

Question by Court. "Well, how could you make these estimates unless you had this information?"

Answer. "That was first brought out here at this previous hearing. We took their word for that just like we carried the inventory, we accepted that as true."

Question. "If you accepted that as true how is it there is a difference of over a million dollars?"

Answer. "That is their inflated value over what they paid

310 for them. I would like to have the Court understand that

I wouldn't attempt to say just the figure that ought to be used in these rate cases."

Question. "Did this value of \$169,000.00 include only non-operative leases?"

Answer. "Well, I thought it included all, but Mr. Smith tells me it is the reserve. I think the reserve acreage near the pipe line is worth something. The cost of the producing acreage is reflected by the number of wells they have."

Recross-examination:

The valuation of \$105,000.00 for the fifteen gas wells is largely on the estimates that are made for reproduction cost of drilling the wells."

Question. "The leaseholdings, as I understand you, was data supplied to you, as representing the bonuses or cost of acquiring the acreage?"

Answer. "That is as I understand these figures."

Question. "You had no list of where the acreage is, and no opportunity to inspect it?"

Answer. "No."

Question. "Was it your opinion the cost value of that acreage was the proper way to list it in the appraisal?"

Answer. "In my opinion, yes."

Question. "It is a continuing thing, goes and comes?"

Answer. "Yes, sir. Some leases expire and some are renewed, and where the money comes from is possibly immaterial, but it is usually paid out of these operating costs.

Roy E. CHASE, on direct examination, testified:

I am a Certified Public Accountant. In the Fall of 1920 I went to Pittsburgh and made an inspection of the books of the Arkansas Natural Gas Company; it was what the accountants call an "investigation"; it was a complete audit of certain angles of it, but generally speaking it was an investigation of the income and capital assets. I made a written report which I herewith file as an exhibit to my testimony.

EXHIBIT A TO CHASE.

Arkansas Natural Gas Company.

Report on Investigation.

September 30, 1920.

Prepared by
 Chase, Wallin & Gaunt,
 Public Accountants,
 Little Rock, Ark.

Index.

Letter of Transmittal	Exhibit A
Balance Sheet September 30, 1920	Exhibit B
Condensed Operating Reports from 1910 to September 30, 1920, both Inclusive	Exhibit C
Analysis of Surplus	Schedule 1
Property and Plant—Gas Department	Schedule 2
Property and Plant—Oil Department	Schedule 3
Property and Plant—Joint Facilities	Schedule 4
Operating Report for Year Ended December 31, 1910	Schedule 5
Do. Do. December 31, 1911	Schedule 6
Do. Do. December 31, 1912	Schedule 7
Do. Do. December 31, 1913	Schedule 8
Do. Do. December 31, 1914	Schedule 9
Do. Do. December 31, 1915	Schedule 10
Do. Do. December 31, 1916	Schedule 11
Do. Do. December 31, 1917	Schedule 12
Do. Do. December 31, 1918	Schedule 13
Do. Do. December 31, 1919	Schedule 14
Operating Report for Nine Months Ended September 30, 1920	Schedule 15
Depreciation Charges By Years	Schedule 15
Repairs Gas Department Charged by Years	Schedule 16

313 Roye E. Chase, C. P. A.
Jas. L. Wallin.
E. L. Gaunt.

Andits, Systems, Investigations, Tax Matters.

Chase, Wallin & Gaunt,
Public Accountants,
Hollenberg Building,
Little Rock, Arkansas.

Phone Main 5370.

November 30, 1920.

Arkansas Gas Consumers Association,
Little Rock, Arkansas.

GENTLEMEN:

At your direction and pursuant to an order of the Arkansas Corporation Commission, we have made an investigation of the books and records of Arkansas Natural Gas Company, from its organization to September 30, 1920, and present you herewith our Report thereon in the following Exhibits and Accompanying Schedules.

In Exhibit "A", we present a detailed Balance Sheet of this Company at September 30, 1920, as shown by the Company's books. As per your request, we did not verify the major portion of the constituent items.

In Exhibit "B", we present in condensed form, the results of operations for each year since the organization of the Company.

In Exhibit "C", we show the analysis of Surplus, over the period of review, which is self-explanatory.

The various accounts in Exhibit "A", Balance Sheet are subject to the following comments and explanations:

Fixed Assets, \$14,441,192.22.

We made a thorough analysis of the items entering into the figures shown as Gas Property and Plant and that of the Oil Department up to 1920, after which we were unable to locate all of the details of construction. In checking over the entries making up these Capital Asset Accounts, we found the following amounts charged into Gas Construction Accounts:

Bond Commissions	\$159,280.00
Bond Interest	168,131.04
Organization Expense	104,764.75

While it is a settled principle that interest during the period of construction is a proper charge to the cost of the asset. Bond Commissions and Organization Expense, in our opinion, should be considered as Deferred Charges to future operations.

314 We have already sent you a list furnished by the Company of lands owned in fee. We requested that we be given such a list of description of lands upon which the Company had Oil and Gas rights, but were informed that the Officials of the Company had decided not to furnish us this information. In Schedule 1, we submit the details of Gas Construction to date. In Making up this Schedule of Property upon which to base a return, the Gas Company used the figures contained in this Schedule with the exception of the item of Spur Track \$1,447.28, and a charge of \$17.56 to the Rogers Compressing Station. To the total of these items they added one-third of the value of Warehouse Supplies and \$34,464.77 of the charge to Automobiles, both of these amount being their estimates of the amount of these Joint Facilities that is applicable to Gas Operations. On this basis their figures should appear as follows:

Property & Plant (See Schedule 1)	\$5,881,496.71	
Less: Reserve for Depreciation	1,832,064.44	
		\$4,049,432.27
Warehouse Supplies (1/3)	\$92,674.24	
Less: Reserve for Depreciation	5,487.77	
		87,186.47
Automobiles	\$34,464.77	
Less: Reserve for Depreciation	7,680.43	
		26,784.34
Depreciated Value Gas Property		\$4,163,403.00

During the period under review, we found that up to and including the year 1918 the Company has charged Depreciation and credited the Fixed Assets with Depreciation, as shown in Schedule 15. During the year 1920, a careful analysis was made of these deductions and the amounts previously deducted restored to the Capital Assets and credited to Reserve for Depreciation, which we show as deductions from the Assets affected.

Incompleted Wells, Gas, \$89,341.89.

This represents the expenditures to date on wells now being drilled for gas. It is the policy of the Company to keep accurate records of the cost of drilling wells, carrying same as an open account. When the well is finished, the cost is determined and the cost of pipe casings and other tangible property charged to Construction accounts while the labor and other expense of drilling is charged to Operating Expenses. In the standard classifications for Natural Gas Companies, we find that part of the cost of the wells, being written off thru depreciation charges over the life of the well.

Property & Plant, Oil Department, \$1,376,617.09.

Details of this item will be found in Schedule 2, and call for no particular comment.

315 Incompleted Oil Construction, \$899,591.68.

This item represents expenditures for Capital Assets in the Oil Department, which have not been transferred to the usual Capital account. It is the policy of the Company to carry Construction expenditures in an open account during the construction period at the close of which an Inventory is taken and the expenditures distributed as per the classification. We are informed that practically all of the oil construction shown above as unfinished, was started in 1919 and has already been completed in 1920, but still appears on the books as incompletely, for the reason that formal Inventories and completion reports have not been received.

Incompleted Wells, Oil, \$188,430.09.

This represents the cost to date of unfinished oil wells and is subject to the same comment as the item of Incompleted Gas Wells heretofore referred to.

Property & Plant, Joint Facilities, \$337,779.20.

Details of this item will be found in Schedule 3 and consists of equipment used jointly by the Gas and Oil Departments. The Company estimates that 1/3 of the Warehouse material and a specified portion of Automobiles are applicable to the Gas Department. We have previously discussed this in connection with the analysis of Gas Construction accounts.

Investment Suspense, \$7,500,000.00.

This item represents the entries made to offset the original issue of Capital Stock. The first amount of \$6,500,000.00 was charged to Gas Production Expenditures in the Arkansas, Louisiana and Taxes fields. According to the records of the Company \$2,500,000.00 of this stock was issued in payment for leases, gas rights and nine gas wells, while the \$4,000,000.00 was issued as bonus with a like amount of Bonds of the Company. In December 1914, the total amount was transferred from Gas Production Expenditures to investment Suspense. The balance of the account \$1,000,000.00 represents stock issued in November, 1916 as bonus with new General Mortgages, Bonds and Preferred Stock issued at that time to take up a portion of the Company's floating debt.

Investments, \$227,008.29.

The first two items are self-explanatory. The last one represents advances made to Arkansas Fuel Oil Company, a Corporation organized by the same interests that control the Gas Company. We were informed that this Company was owned entirely by the Arkansas Natural Gas Company, but did not find such facts recorded in the books of either Company. As it has Oil property only, we did not make any further investigation.

316

Special Deposits, \$694,131.94.

We did not verify either of these items. We understand the first item has since been used to pay off the outstanding Bonds, and the Cash in Eserow has been made available for use of the Company.

Current Assets, \$2,747,677.07.

We did not verify any of these items, however, they are self-explanatory. We are informed that no provision has been made for bad debts in the gas accounts receivable, and the shrinkage will be a considerable sum. Some of these are now in process of adjustment. In this connection it will be noted that the Current Assets are over five times the amount of Current Liabilities.

Other Assets.

The first two items are self-explanatory. We examined the items, but did not verify them from outside sources. Included in Suspense accounts, is a claim for \$7,500.00, paid in error to the Collector of Internal Revenue, on account of Income and Excess Profits Taxes for 1919, and the balance consists of a number of charges, the ultimate disposition of which is not yet known. In this connection we find that the present value of the Insurance policies of the Company are not considered in the books at this time.

Common Stock, \$13,530,750.00.

We have already commented on the issuance of the first \$7,500,000.00 of this stock. The balance was issued during December 1919, and during 1920 for Cash and in exchange for Bonds and Preferred Stock of the Company called for retirement. We did not verify the stock records of the Company.

Preferred Stock, \$10,200.00.

This stock was issued in November 1916, \$1,865,000.00 being issued in exchange for 50% of the General Mortgage Bonds then outstanding, and \$500,000.00 issued as part payment for the purpose of retiring Notes Payable of the Company. No dividends were paid on this stock until 1920, when all back dividends were paid and the stock called for retirement. \$2,354,800.00 of the stock has been retired to September 30, 1920.

First Mortgage Bonds, \$77,000.00.

These Bonds in the amount of \$270,000.00 were issued in 1910 and 1911, to provide funds to build the plants. During 1920 these bonds have been called at 102½ and \$193,000.00 have been retired to the date of our Report. Funds are now on deposit with the Trustee to take up the balance at November 1, 1920.

317 New General Mortgage Bonds, \$542,500.00.

During 1909 to 1912 the Company sold \$3,730,000.00 of its General Mortgage Bonds to provide funds for building its plants. These bonds were retired in November 1916, and there was issued in lieu hereof \$1,865,000.00 of Preferred Stock and a like amount of New General Mortgage Bonds. This last issue of bonds was called for payment at 105 in 1920, and up to September 30, 1920, there have been retired at this figure \$1,847,500.00 of the same. Funds to retire the balance on November 1, 1920 were in the hands of the Trustee at the date of our Report.

Pine Bluff Natural Gas Co. Bonds, \$33,000.00.

During the year 1911 there was organized a subsidiary Company to take over the distribution system of the Pine Bluff Gas Company. At that time they issued the above bonds to provide funds. In 1915 the Arkansas Natural Gas Company took over the Assets of this subsidiary Company and assumed its liabilities. Since that time these bonds have been retired at the rate of \$3,000.00 per year, leaving the above amount outstanding at the date of our Report.

Current Liabilities, \$526,000.27; Accrued Liabilities, 122,607.12.

These items are self-explanatory and have not been verified by us.

Deferred Credits, \$45,734.68.

These items represent receipts, nearly all for oil sales which have not yet been distributed, pending further advices.

Surplus, \$3,273,869.25.

Details of this will be found in Exhibit "C". No provision has been made for Depreciation for 1920, nor for Income and Excess Profits Taxes for 1920.

In Exhibit "B", we present Condensed Operating Reports over the entire period of operation of the Company. Detailed Operating Reports for each year are shown in Schedules Nos. 4 to 14, both inclusive. During the years 1911 to 1914, both inclusive, the business in Arkansas was handled by two subsidiary Companies, the Pine Bluff Natural Gas Company, which operated the distribution system in Pine Bluff, and the Arkansas Pipe Line Company, which operated the balance of the system in Arkansas. As all of the stock of both of these Companies was owned by the Arkansas Natural Gas Company, we have consolidated the earnings and expenses of the three Companies during that period, eliminating inter-company items.

In Schedule 15, we show the amounts charged off for Depreciation each year. It will be noted that the Company in its first three years of operation charged off no Depreciation, nor have they

followed any fixed plan of charging same in subsequent years. The amount of Depreciation was decided upon each year by the Board of Directors, after the Net Earnings had been determined. In 1916 the charge for Depreciation amounts to the exact Net Income before charging off same. During the year 1920 they made an additional charge to bring 1919 Depreciation up to 10% on the tangible gas property. In previous years the rate used was less than 10%. No Depreciation has yet been charged for the year 1920. During 1920 the Company made an entry charging Gas Construction with \$42,988.87, and Oil Construction with \$261,607.43, and crediting Surplus to transfer items charged to Construction. We have applied this adjustment to the 1919 report of operations.

We found all labor charged direct to expense or construction as the case might be. All items directly chargeable to Gas Activities are charged to Gas Department. Joint employees are now charged one-half to each Department. Prior to 1919 all general overhead expense was charged to Gas Department, but in that year 15% of all General Expense was charged to Oil General Expense. In the early years of operation we find no charge to Oil expense for operations. Beginning with 1914 it will be noted the Farm Expenses appear in the Oil Department. In 1919, as previously stated, a portion of General expense was so charged, and during the current year these joint general expenses have been divided equally between Gas and Oil.

We examined the copies of Income Tax Returns made by the Company since its organization, with the exception of the first three years, which returns could not be found. The amount of taxes assessed each year and paid in the subsequent year, is shown in the following table:

Year.	Amount
1910	None.
1911	\$29.09
1912	None.
1913	None.
1914	155.62
1915	None.
1916	None.
1917	21,561.65
1918	5,782.55
1919	None.

All of the above amounts are included in Taxes charged to Gas Expense, except that for 1918 paid in 1919, of which 15% was charged to Oil Expense. At the close of 1919 it was estimated by the Company that its Income and Excess Profits Taxes would amount to \$30,000.00. During the early part of 1920, they paid to the Collector of Internal Revenue one-fourth of the amount, or \$7,500.00. Later the Company filed an amended return after adjusting their Depreciation charges for 1919, the amended return showing 319 no taxable income. In our opinion, Income and Excess

Profits Taxes are not proper charged to operating expenses, but should be charged direct to Surplus.

We examined the records of salaries paid to Officers of the Corporation, and found that the President, Mr. J. C. Trees, and the Vice President Mr. G. H. Fleim received no salaries. Mr. A. B. Dally, Jr. as General Manager received \$12,000.00 per year, from June 1910 to March 1915, since which time he has received a salary of \$3,000.00 per annum, as Assistant to the President. Mr. H. L. Snyder, as General Superintendent, received a salary of \$5,000.00 per annum from March 1915 to February 1916. Mr. J. R. Munce, as General Manager was paid \$10,000.00 per annum from October 1915 to January 1918, since which date he has received \$12,000.00 per year. Mr. W. J. Diehl as Secretary and Treasurer, from June 1910 to April 1915 received a salary of \$5,000.00 per year; from April 1915 to October 1919, \$2,500.00 per annum, and since that date at the rate of \$4,200.00 per year. Mr. E. J. Cole, as Vice President and Auditor was paid at the following rates per annum—from March 1915 to May 1917, \$3,000.00; from May 1917 to January 1918, \$3,300.00; from January 1918 to January 1919, \$3,600.00; from January 1919 to October 1919, \$4,200.00; from October 1919 to date \$5,400.00. Prior to 1919 all of these salaries were charged to the Gas Department. In 1919, 15% was charged to Oil Department, and during 1920, they are divided equally between Gas and Oil Departments.

In Schedule 16, we submit a summary of the charges made for repairs in the Gas Department over the period of operation. We find that renewals in the plant have been charged to repairs, but from the records we were unable to ascertain just how much was for renewals. We also found that the replacement of lines washed out by floods was included in repairs, except where additional lines were built at the same time, the latter portion being charged to Property and Plant.

The amounts paid each year for Purchased Gas are shown in our detailed operating reports. We attempted to obtain the quantities purchased, but were informed that this had not been tabulated for the entire period. During the year 1918, the Company purchased 9,617,424,000 cubic feet of gas at an average price of \$0.0485 per M, and in 1919, 8,703,616,000 cubic feet at an average of \$0.0568 per M.

As per your instructions we examined the records to discover the connection between Arkansas Natural Gas Company and the Reserve Natural Gas Company of Louisiana. The Arkansas Natural Gas Company has no record on its books of any ownership of stock in the Reserve Natural Gas Company. In the annual report of the President of Arkansas Natural Gas Company for 1914, we found the following: "In August 1914, the Reserve Natural Gas Company of Louisiana, was incorporated by parties interested in the Arkansas Natural Gas Company, and several large producing Companies in the Louisiana Field, for the purpose of marketing gas from the large fields developed in De Soto Parish, Louisiana, during the past two years."

320 On the books of the Arkansas Natural Gas Company, we found the account opened June 30, 1914, called "New 16 Line," which was changed on July 20, 1914 to Reserve Natural Gas Co. This account was charged with various expenditures up to November 9, 1914, when all were paid by checks received aggregating \$4,159.61. Since that date small items have been paid for and charged to the Reserve Natural Gas Company, aggregating \$6,681.20, which still stands as a debit balance.

The Arkansas Natural Gas Company sells its gas from the De Soto field to the Reserve Natural Gas Company, at its pipe lines for .03¢ per M cubic feet. The Reserve Natural Gas Company transports this gas to the pipe lines of Arkansas Natural Gas Company, near the Rogers Station, and sells the Gas to Arkansas Natural Gas Company at .06½¢ per M cubic feet. The entries on this account each month reflect the credit to the Reserve Natural Gas for the net difference between the gas purchased and that sold them in the field, and the debit for the check given in payment therefor.

We made inquiry as to rates charged for gas and were advised that all consumers, excepting a few special rates to Charitable Institutions, were as per the rates as filed with the Arkansas Corporation Commission. We did not verify the calculations of these bills, but did not find any evidence to the contrary. Up to January 1, 1920, the rates in force were as follows:

42¢ per M for the first 50,000 cubic feet.
37¢ per M for the next 50,000 cubic feet.
32¢ per M for the next 50,000 cubic feet.
27¢ per M for the next 50,000 cubic feet.
22¢ per M for the next 50,000 cubic feet.

all subject to a discount of 2¢ per M feet for payment on or before the 15th day of the month following that in which the gas is supplied. At that date the rates were increased 5¢ per M.

In conclusion we wish to thank your Committee for entrusting us with this engagement, and to state that we will be glad to furnish any further information in our possession, as to the details of the Schedules which comprise our Report.

Respectfully submitted,

CHASE, WALLIN & GAUNT,
By ROY E. CHASE,
Certified Public Accountant.

(Here follows Exhibit A, marked page 321.)

EXHIBIT "A."

Balance Sheet.

Arkansas Natural Gas Company.

September 30, 1920.

Assets.

Fixed Assets:

Property & Plant—Gas Department (Schedule 1)	\$5,881,496.71
Less: Reserve for Depreciation.....	1,832,064.44
	<hr/>
Incompleted Wells—Gas	
Property & Plant—Oil Department (Schedule 2)	\$1,459,478.28
Less: Reserve for Depreciation.....	82,861.19
	<hr/>
Incompleted Construction—Oil	
Incompleted Wells—Oil	
Property & Plant—Joint Facilities (Schedule 3)	\$374,756.49
Less: Reserve for Depreciation.....	36,977.29
	<hr/>
Investment Suspense	
Total Fixed Assets.....	

Investments:

Stocks Owned	\$700.00
Employees' Residences	52,799.53
Due from Arkansas Fuel Oil Co.....	173,508.76
	<hr/>
Total Investments	

Special Deposits:

Cash in Hands Bonds Trustees to Retire Bonds.....	\$667,135.00
Cash in Escrow.....	26,996.94
	<hr/>
Total Special Deposits.....	

Current Assets:

Cash in Banks.....	\$686,206.75
Petty Cash Funds.....	8,629.23
Liberty Bonds	1,100.00
War Savings Stamps.....	841.33
Accounts Receivable—Gas Department.....	354,710.67
Accounts Receivable—Oil Department.....	930,896.40
Miscellaneous Accounts Receivable.....	42,574.30
Notes Receivable	485,694.55
Trade Acceptances Receivable.....	100,052.75
Guaranty Deposits	1,200.00
Scrip	2,515.29
Inventory—Oil	32,085.80
Check Cash Bank Balances	101,170.00

Liabilities and Capital.

Capital Stock:

Common Stock	\$13,530,750.00
Preferred Stock	10,200.00
	<hr/>
Total Capital Stock.....	\$13,540,950.00

Funded Debt:

First Mortgage Bonds.....	\$77,000.00
New General Mortgage Bonds..	542,500.00
Pine Bluff Natural Gas Company Bonds	33,000.00
	<hr/>
Total Funded Debt.....	652,500.00

Current Liabilities:

Notes Payable	\$154,000.00
Accounts Payable	331,827.77
Consumers' Deposits	40,172.50
	<hr/>
Total Current Liabilities.....	526,000.27

Accrued Liabilities:

Accrued Interest on Funded Debt	\$15,487.40
Taxes Accrued	107,119.72
	<hr/>
Total Accrued Liabilities.....	122,607.12

Deferred Credits:

Suspense Accounts	45,734.68
Surplus (See Exhibit C)*.....	3,273,869.25

Less: Reserve for Depreciation	1,832,084.44	\$4,049,432.27
Incompleted Wells—Gas		89,341.89
Property & Plant—Oil Department (Schedule 2)	\$1,459,478.28	
Less: Reserve for Depreciation	82,861.19	
Incompleted Construction—Oil		1,376,617.09
Incompleted Wells—Oil		899,591.68
Property & Plant—Joint Facilities (Schedule 3)	\$374,756.49	188,430.09
Less: Reserve for Depreciation	36,977.29	
Investment Suspense		337,779.20
Total Fixed Assets		7,500,000.00
 Investments:		
Stocks Owned		\$700.00
Employees' Residences		52,799.53
Due from Arkansas Fuel Oil Co.		173,508.76
Total Investments		
 Special Deposits:		
Cash in Hands Bonds Trustees to Retire Bonds		\$667,135.00
Cash in Escrow		26,996.94
Total Special Deposits		
 Current Assets:		
Cash in Banks		\$686,206.75
Petty Cash Funds		8,629.23
Liberty Bonds		1,100.00
War Savings Stamps		841.33
Accounts Receivable—Gas Department		354,710.67
Accounts Receivable—Oil Department		930,896.40
Miscellaneous Accounts Receivable		42,574.30
Notes Receivable		485,694.55
Trade Acceptances Receivable		100,052.75
Guaranty Deposits		1,200.00
Scrip		2,515.29
Inventory—Oil		32,085.80
Stock Subscriptions Receivable		101,170.00
Total Current Assets		
 Other Assets:		
Advances to Field Agents		30,892.90
Due from Employes		5,087.30
Suspense Accounts		15,671.60
Total other assets		
Total assets		

	Total Capital Stock.....	\$13,540,950.00
	Funded Debt:	
	First Mortgage Bonds.....	\$77,000.00
	New General Mortgage Bonds..	542,500.00
	Pine Bluff Natural Gas Company Bonds	33,000.00
	Total Funded Debt.....	652,500.00
	Current Liabilities:	
	Notes Payable	\$154,000.00
\$14,441,192.22	Accounts Payable	331,827.77
	Consumers' Deposits	40,172.50
	Total Current Liabilities.....	526,000.27
	Accrued Liabilities:	
	Accrued Interest on Funded Debt	\$15,487.40
227,008.29	Taxes Accrued	107,119.72
	Total Accrued Liabilities.....	122,607.12
	Deferred Credits:	
	Suspense Accounts	45,734.68
694,131.94	Surplus (See Exhibit C)*.....	3,273,869.25
2,747,677.07		
51,651.80		
\$18,161,661.32	Total liabilities & capital.....	\$18,161,661.32

Condensed Operating Reports.

Arkansas Natural Gas Company.

Years Ended December 31, 1910, to 1919, Both Inc., and Nine Months Ended September 30, 1920.

	December 31, 1910.	December 31, 1911.	
Gas Department.			
Gross Sales.....	\$13,255.70	.....	\$253,897.63
Operating Expenses:			
Operation and Taxes	\$4,600.17	\$142,592.42	
Depreciation .....	.00	.00	
Total Operating Expense.....	.....	4,600.17	142,592.42
Net Earnings from Operations.....	.....	\$8,655.53	\$111,305.21
Other Income:			
Field Earnings	\$.00	\$.00	
Rentals from Real Estate.....	.00	36.00	
Special Purchase Contracts .....	.00	.00	
Miscellaneous .....	.00	49,192.19	
Total Other Income .....	.....	.00	49,228.19
Total	\$8,655.53	.....	\$100,533.40

Condensed Operating Reports.—Continued.

Deductions:	December 31, 1910.		December 31, 1911.	
Field Development Charged Off.....	\$.00		\$.00	
Special Adjustments.....	.00		.00	
Total Deductions .....		.00		.00
Net Earnings Gas Department.....		\$8,655.53		\$160,533.40
		<hr/>		<hr/>
Oil Department.				
Gross Sales.....	\$.00		\$.00	
Operating Expenses:				
Operation and Taxes.....	\$.00		\$.00	
Depreciation .....	.00		.00	
Total Operating Expense.....		.00		.00
Net Earnings from Operations.....		\$.00		\$.00
Other Income:				
Miscellaneous	\$.00		\$.00	
Total Other Income.....			.00	.00
Net Earnings Oil Department.....			\$.00	\$.00
		<hr/>		<hr/>

Recapitulation.			
Net Earnings Gas Department.....	\$8,655.53		\$160,533.40
Net Earnings Oil Department.....	.00		.00
Total Net Earnings	\$8,655.53		\$160,533.40
 Deductions:			
Interest on Bonds.....	\$.00		\$117,726.75
Interest on Floating Debt.....	.00		11,387.57
Bond Commissions & Expense.....	.00		39,770.00
Profit & Loss Adjustments.....	.00		.00
Total Deductions.....	.00		168,844.32
 Net Income	\$8,655.53		[\$8,350.92]*
			=====

Note: Net Income for Nine Months ended September 30, 1920 subject to Depreciation for 1920 and Income and
Income and Excess Profits Tax for 1920.

[*Retd in copy.]

Condensed Operating Reports.—Continued.

	Gas Department	December 31, 1912.		December 31, 1913.	
Gross Sales		\$674,611.96		\$850,180.72	
Operating Expenses:					
Operation and Taxes	\$276,355.08		\$324,308.22		
Depreciation . . . . .	.00		224,462.71		
Total Operating Expense		276,355.08		548,770.93	
Net Earnings from Operations		\$398,256.88		\$301,409.79	
Other Income:					
Field Earnings	\$.00		\$.00		
Rentals from Real Estate	292.00		419.00		
Special Purchase Contracts . . . . .	.00		.00		
Miscellaneous	319.63		3,363.32		
Total Other Income		611.63		3,782.32	
Total		\$398,868.51		\$305,192.11	
Deductions:					
Field Development Charged Off	\$25,478.36		\$3,516.51		
Special Adjustments	24,797.25		19,283.17		
Total Deductions		50,275.61		22,799.68	
Net Earnings Gas Department		\$348,592.90		\$282,392.43	

Oil Department.						
Gross Sales.....	\$63.00					
Operating Expenses:						
Operation and Taxes.....	\$.00					
Depreciation .....	.00					
Total Operating Expense.....	.00					
Net Earnings from Operations.....	\$63.00					
Other Income:						
Miscellaneous .....	.00					
Total Other Income.....	.00					
Net Earnings Oil Department.....	\$63.00					
Recapitulation.						
Net Earnings Gas Department.....	\$348,582.90					
Net Earnings Oil Department.....	63.00					
Total Net Earnings	\$348,655.90					
						\$284,383.02

Condensed Operating Reports.—Continued.

Deductions:	December 31, 1912.	December 31, 1913.
Interest on Bonds.....	\$243,860.00	\$243,405.00
Interest on Floating Debt.....	76,295.66	71,031.75
Bond Commissions & Expense.....	.00	3,655.58
Profit & Loss Adjustments.....	.00	[7,196.46]*
Total Deductions.....	<hr/>	<hr/>
Net Income	<hr/> <hr/>	<hr/> <hr/>
	\$28,500.24	\$10,895.87
	<hr/> <hr/>	<hr/> <hr/>
Gas Department.	December 31, 1914.	December 31, 1915.
Gross Sales.....	\$94,276.80	.....
Operating Expenses:		
Operation and Taxes.....	\$421,758.53	\$501,286.02
Depreciation	<hr/>	36,272.62
Total Operating Expense.....	<hr/>	<hr/>
Net Earnings from Operations.....	<hr/> <hr/>	<hr/> <hr/>
Other Income:		
Field Earnings.....	\$.00	\$.00
Rentals from Real Estate.....	528.55	1,145.00

Special Purchase Contracts.....	264.04	1,634.02
Miscellaneous	5,831.63	1,327.60
Total Other Income.....	6,624.22	4,106.62
Total	\$369,892.51	\$314,398.12
Deductions:		
Field Development Charged Off.....	\$2,787.83	\$0.00
Special Adjustments.....	35,704.00	25,181.64
Total Deductions	38,491.83	25,181.64
Net Earnings Gas Department.....	<u>\$331,329.68</u>	<u>\$289,216.48</u>
Oil Department.		
Gross Sales.....	\$2,693.77	.....
Operating Expenses:		
Operation and Taxes.....	\$4,902.69	\$2,451.64
Depreciation .....	.00	.00
Total Operating Expense	4,902.69	2,451.64
Net Earnings from Operations.....	<u>[\$2,208.92]*</u>	<u>\$237.10</u>

[*Red in copy.]

Condensed Operating Reports.—Continued.

	December 31, 1914.	December 31, 1915.
Other Income:		
Miscellaneous	\$.00	\$.00
Total Other Income .....	.00	.00
Net Earnings Oil Department	<u><u>[\$2,208.92]*</u></u>	<u><u>\$237.10</u></u>
Recapitulation.		
Net Earnings Gas Department	\$331,329.68	\$289,216.48
Net Earnings Oil Department	<u><u>[2,208.92]*</u></u>	<u><u>237.10</u></u>
Total Net Earnings	\$329,120.76	\$289,453.58
Deductions:		
Interest on Bonds	\$243,105.00	\$242,925.00
Interest on Floating Debt	77,726.23	73,750.59
Bond Commissions & Expense .....	.00	.00
Profit & Loss Adjustments	204.03	4,062.04
Total Deductions	321,035.26	320,737.63
Net Income	<u><u>\$8,085.50</u></u>	<u><u>[\$31,284.05]*</u></u>

	December 31, 1916.	December 31, 1916.
Gas Department.		
Gross Sales.....	\$1,015,847.46	\$1,360,495.52
Operating Expenses:		
Operation and Taxes.....	\$596,085.71	\$816,014.94
Depreciation	119,161.65	301,737.58
Total Operating Expense.....	<hr/> 715,247.36	<hr/> 1,117,752.52
Net Earnings from Operations.....	<hr/> \$300,600.10	<hr/> \$242,743.00
Other Income:		
Field Earnings.....	\$5,410.86	\$42,210.04
Rentals from Real Estate.....	1,256.91	1,378.97
Special Purchase Contracts.....	5,752.00	3,094.28
Miscellaneous	923.89	31,887.21
Total Other Income.....	<hr/> 13,343.66	<hr/> 78,570.50
Total	<hr/> \$313,943.76	<hr/> \$321,312.50
Deductions:		
Field Development Charged Off.....	\$.00	\$.00
Special Adjustments.....	14,179.22	8,733.97
Total Deductions	<hr/> 14,179.22	<hr/> 8,733.97
Net Earnings Gas Department.....	<hr/> \$299,764.54	<hr/> \$312,579.53

Condensed Operating Reports.—Continued.

	Oil Department.	December 31, 1916.		December 31, 1917.
Gross Sales		\$6,263.61		\$9,237.77
Operating Expenses:				
Operation and Taxes	\$4,208.22		\$5,283.10	
Depreciation . . . . .	.00		3,281.36	
Total Operating Expense		4,208.22		8,564.46
Net Earnings from Operations		\$2,055.39		\$673.31
Other Income:			\$.00	
Miscellaneous				
Total Other Income . . . . .		.00		.00
Net Earnings Oil Department		\$2,055.39		\$673.31
Recapitulation.				
Net Earnings Gas Department	\$299,764.54		\$312,579.53	
Net Earnings Oil Department	2,055.39		673.31	
Total Net Earnings		\$301,819.93		\$313,252.84
Deductions:				
Interest on Bonds	\$173,145.00			
Interest on Floating Debt	\$71,997.96			
				\$150,624.00
				\$24,320.96

<i>Bond Commissions & Expense.....</i>	<i>50,000.00</i>	<i>[7,631.62]*</i>
<i>Profit & Loss Adjustments.....</i>	<i>6,676.97</i>	
<i>Total Deductions.....</i>	<i>301,819.93</i>	<i>173,322.34</i>
<i>Net Income</i>	<i>\$.00</i>	<i><u><u>\$139,930.50</u></u></i>
Gas Department.		
December 31, 1918.		
Gross Sales.....	\$1,692,353.83	..... \$1,734,025.96
Operating Expenses:		
Operation and Taxes.....	\$1,065,334.77	\$1,321,593.29
Depreciation	<u>475,094.27</u>	<u>561,430.31</u>
Total Operating Expense.....	1,540,429.04	1,883,023.60
Net Earnings from Operations.....	\$151,924.79	<u><u>[\$148,997.64]*</u></u>
Other Income:		
Field Earnings.....	\$70,549.31	\$94,694.24
Rentals from Real Estate.....	1,411.02	1,681.00
Special Purchase Contracts.....	9,076.49	14,349.62
Miscellaneous	13,601.42	7,856.70
Total Other Income.....	94,738.24	118,581.56
Total	\$246,563.03	<u><u>[\$30,416.08]*</u></u>

[*Red in copy.]

Condensed Operating Reports.—Continued.

	December 31, 1918.	December 31, 1919.
Deductions:		
Field Development Charged Off.....	\$ 00	\$.00
Special Adjustments.....	<u>14,449.79</u>	<u>6,965.90</u>
Total Deductions	<u>14,449.79</u>	<u>6,965.90</u>
Net Earnings Gas Department.....	<u>\$232,113.24</u>	<u>[\$37,381.98]*</u>
Oil Department.		
Gross Sales.....	\$18,477.48	\$270,805.22
Operating Expenses:		
Operation and Taxes.....	\$19,962.24	\$112,031.28
Depreciation	<u>11,595.08</u>	<u>76,404.31</u>
Total Operating Expense.....	<u>31,557.32</u>	<u>188,435.59</u>
Net Earnings from Operations.....	<u>[\$13,079.84]*</u>	<u>\$82,369.63</u>
Other Income:		
Miscellaneous	\$.00	\$.00
Total Other Income.....	.00	.00
Net Earnings Oil Department.....	<u>[\$13,079.84]*</u>	<u>\$82,369.63</u>

*Subject to correction.

Recapitulation.			
Net Earnings Gas Department	\$232,113.24		
Net Earnings Oil Department	[13,079.84]*		
Total Net Earnings	\$219,033.40		
Deductions:			
Interest on Bonds	\$148,570.00		
Interest on Floating Debt	18,252.80		
Bond Commissions & Expense .....	.00		
Profit & Loss Adjustments	2,002.71		
Total Deductions	168,845.51		
Net Income	\$50,187.89		
		(9 months only) September 30, 1920.	
Gas Department.			
Gross Sales			
Operating Expenses:			
Operation and Taxes		\$1,200,640.51	
Depreciation .....		.00	
Total Operating Expense			
Net Earnings from Operations		1,200,640.51	
		\$470,066.71	

[*Red in copy.]

Condensed Operating Reports.—Continued.

		(9 months only) September 30, 1920.
Other Income:		
Field Earnings		\$92,785.02
Rentals from Real Estate		1,656.25
Special Purchase Contracts		1,523.70
Miscellaneous		28,084.05
		<hr/>
Total Other Income		124,049.02
Total		<hr/> \$594,115.73
Deductions:		
Field Development Charged Off		\$.00
Special Adjustments		11,555.61
		<hr/>
Total Deductions		11,555.61
Net Earnings Gas Department		<hr/> \$582,560.12
Oil Department.		
Gross Sales		<hr/> \$4,526,924.50
Operating Expenses:		
Operation and Taxes		\$756,358.80
Depreciation .....		.00
		<hr/>
Total Operating Expense		756,358.80

Net Earnings from Operations

Other Income:

Miscellaneous	\$27,863.96
Total Other Income.....	27,863.96
Net Earnings Oil Department.....	
	\$3,798,429.66

Recapitulation.

Net Earnings Gas Department.....	\$582,560.12
Net Earnings Oil Department.....	3,798,429.66
Total Net Earnings	\$4,380,989.78

Deductions:

Interest on Bonds.....	\$87,944.99
Interest on Floating Debt.....	20,518.62
Bond Commissions & Expense.....	.00
Profit & Loss Adjustments.....	11,307.64
Total Deductions.....	119,771.25
Net Income	\$4,261,218.53

14—500

EXHIBIT "C."

Analysis of Surplus.

Arkansas Natural Gas Company.

September 30, 1920.

12-31-10. Net Profits for 1910.....	\$8,655.53
Balance January 1, 1911.....	\$8,655.53
Deduct:	
12-31-11. Net Loss for 1911.....	8,350.92
Balance January 1, 1912.....	\$304.61
Add:	
12-31-12. Net Profits for 1912.....	28,500.24
Balance January 1, 1913.....	\$28,804.85
Deduct:	
12-31-13. Net Loss for 1913.....	26,512.85
Balance January 1, 1914.....	\$2,292.00
Add:	
12-31-14. Net Profit for 1914.....	8,085.50
Balance January 1, 1915.....	\$10,377.50
Deduct:	
12-31-15. Net Loss for 1915.....	31,284.05
Balance January 1, 1916.....	*\$20,906.50
Add:	
12-31-16. Net Profits for 1916.....	.00
Balance January 1, 1917.....	*\$20,906.50
Add:	
12-31-17. Net Profits for 1917.....	139,930.50
Balance January 1, 1918.....	\$119,023.65

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Add:

12-31-18. Net Profits for 1918.....	50,187.89
-------------------------------------	-----------

Balance January 1, 1919.....	\$169,211.84
------------------------------	--------------

Deduct:

12-31-19. Net Loss for 1919.....	136,393.62
----------------------------------	------------

Balance January 1, 1920.....	\$32,818.22
------------------------------	-------------

Add:

9-30-20. Net Profits for 1920 subject to Depreciation charges.....	4,261,218.53
--	--------------

Total	\$4,294,036.75
-------------	----------------

Deduct:

Dividends Paid on Preferred Stock	\$703,587.50
---	--------------

Premium Paid on Preferred Stock Retired	235,480.00
---	------------

Premium Paid on First Mortgage Bonds Retired	2,900.00
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Premium Paid on General Mortgage Bonds Retired	78,200.00
--	-----------

Total Deductions	1,020,167.50
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Balance September 30, 1920, subject to Depreciation Charges and Federal Income and Excess Profits Taxes not entered on books (To Exhibit A)	
---	--

	\$3,273,869.25
--	----------------

SCHEDULE 1.

Property and Plant, Gas Department.

Arkansas Natural Gas Company.

September 30, 1920.

Production:

Pipe, Tubing and Casing.....	\$90,431.54
Other Equipment	6,955.46
Land in Fee	4,682.50
Operated Acreage	20,624.59
Unoperated Acreage	169,382.83
Buildings	9,149.62
Meters	8,124.41
Drilling Tools	16,987.89
 Total Production	 <u>\$326,338.84</u>

Transportation:

Line Pipe	\$2,290,490.20
Land in Fee	4,381.20
Right of Way	52,922.27
Right of Way Expense	29,136.40
Buildings	3,296.38
Fittings	88,789.12
Couplers	267,530.93
Other Material	41,948.08
Labor, Teaming & Freight	1,450,559.99
Meters	4,136.79
Regulators	39,324.52
Service Lines	18.50
Telephone Lines	73,051.73
Tools over \$25.00	578.52
Compressing Stations (Rogers) ...	296,080.97
Compressing Stations (De Soto) ..	154,028.46
 Total Transportation	 <u>4,796,274.00</u>
Forwarded	<u>\$5,122,612.80</u>

326 Brought For'd \$5,122,612.90

Distribution:

Line Pipe	\$261,680.58
Land in Fee	10,505.18
Right of Way	1,463.16
Right of Way Expense	1,532.72
Buildings	14,494.24
Fittings	19,370.31
Couplers	4,886.19
Other Materials	10,193.87
Labor, Teaming & Freight	257,708.88
Meters	82,818.11
Regulators	7,178.26
Service Lines	18,449.56
Tools over \$25.00	2,215.50
Office Furniture	4,876.79

Total Above Items \$697,373.35

Material and Supplies in City Plants	31,332.86
--	-----------

Total Distribution 728,706.21

Other Expenditures:

Spur Track Shreveport	\$1,447.28
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Total Other Expenditures 1,447.28

General:

Office Furniture	\$28,468.32
Tools over \$25.00	262.00

Total General 28,730.32

Grand Total Expenditures \$5,881,496.71

Less: Reserve for Depreciation 1,832,064.44

Depreciated Value at September 30, 1920
(To Exhibit A) \$4,049,432.27

SCHEDULE 2.

Property and Plant, Oil Department.

Arkansas Natural Gas Company.

September 30, 1920.

Production:

Line Pipe	\$40,762.94
Well Tubing and Casing	147,250.76
Other Well Equipment	38,932.27
Operated Acreage	69,000.00
Unoperated Acreage	181,910.22
Buildings	30,794.36
Other Material	8,121.34
Drilling Tools	6,230.77
Labor, Teaming and Freight	362,372.65
Rigs	77,097.06
Drilling	290,676.23
Tanks and Tank Houses	44,661.79
Boilers and Engines	56,075.27
Regulators	360.64
Pump and Pump Stations	1,606.76
Telephone Equipment—Labor, Teaming and Freight	130.43
Total Above Items	\$1,355,983.49
Materials and Supplies	<u>52,196.04</u>
Total Production	\$1,408,179.53
Other Expenditures:	
Spur Track	\$679.00
Total Other Expenditures	<u>679.00</u>
General:	
Furniture & Fixtures	<u>\$97.75</u>
Total General	<u>97.75</u>
Acreage Suspense:	
Leaseholds in South America, Ken- tucky and Kansas	<u>\$50,522.00</u>
Total Acreage Suspense	<u>50,522.00</u>
Grand Total Expenditures	\$1,459,478.28
Less: Reserve for Depreciation	<u>82,861.19</u>
Depreciated Value at September 30, 1920 (To Exhibit A)	\$1,376,617.09

328

SCHEDULE 3.

Property and Plant, Joint Facilities.

Arkansas Natural Gas Company.

September 30, 1920.

Items.	Gross expenditure.	Reserve for depreciation.	Depreciated value.
Automobiles	\$92,054.07	\$20,513.97	\$71,540.10
Teams	4,679.69	.00	4,679.69
Warehouse Supplies.....	278,022.73	16,463.32	261,559.41
Totals (To Exhibit "A")....	\$374,756.49	\$36,977.29	\$337,779.20

329

SCHEDULE 4.

Arkansas Natural Gas Company.

Detailed Operating Report for Year Ended December 31, 1910.

Gas Department.

Earnings:

Field Gas Sales.....	\$13,255.70
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Operating Expenses:

Maintenance:

Changing Construction.....	\$10.00
Repair of Wells.....	1.00
Total Maintenance.....	\$11.00

Conducting Business:

Operating Lines.....	\$2,111.78
Operating Wells.....	1,941.91
Operating Telephone and Telegraph Lines.....	26.30
Leasing	43.50
Office Expense.....	320.45
Tools and Supplies.....	107.73
Legal Expense.....	27.50
Miscellaneous	10.00
Total	4,589.17
Total Operating Expense.....	4,600.17
Net Profit for year ended December 31, 1910...	\$8,655.53

SCHEDULE 5.

Arkansas Natural Gas Company.

Arkansas Pipe Line Company.

Pine Bluff Natural Gas Company.

Consolidated Detailed Operating Report for Year Ended December 31, 1911.

Gas Department.

Gross Earnings:

Sales of Gas.....	\$152,223.31
Field Gas Sales.....	101,674.32
Total Gross Earnings.....	\$253,897.63

Operating Expenses:

Gas Purchases.....	\$18,412.35
--------------------	-------------

Maintenance:

Changing Construction....	\$1,214.66
Repair of Lines.....	237.84
Repair of Service Lines...	30.13
Repair Meters & Regulators	99.30
Repair Buildings.....	10.00
Repair Tel. & Tel. Equipment	739.60
Drilling Wells.....	39,306.21
Depreciation	440.79
Miscellaneous	135.00

Total Maintenance.....	42,213.53
------------------------	-----------

Conducting Business:

Operating Lines.....	\$15,923.06
Operating Wells.....	2,325.21
Setting Meters and Regulating Pressure.....	5,017.03
Reading Meters & Collect..	2,786.41
Operating Tel. & Tel. Line	1,093.81
Auto Livery & Barn.....	639.27
Salaries Officers & Supt...	6,342.12
Taxes	1,414.63
Lease Rentals.....	13,282.16
Well Rentals.....	2,495.24
Leasing	2,121.58
Office Expense.....	17,664.49
Tools and Supplies.....	1,543.48
Legal Expense.....	5,837.25
Engineering	1,714.88
Miscellaneous	1,579.52
Bad Gas Accounts.....	186.40
Total Conducting Business.....	<u>81,966.54</u>
Total Operating Expense.....	<u>142,592.42</u>
Net Earnings from Operating (For'd).....	<u>\$111,305.21</u>
331 Net Earnings from Operations (Brought For'd)	<u>\$111,305.21</u>

Other Income:

Rentals from Real Estate.....	\$36.00
Interest Earnings.....	49,192.19
Total Other Income.....	<u>49,228.19</u>
Net Earnings Gas Department.....	<u>\$160,533.40</u>

Deductions:

Interest First Mortgage Bonds.....	\$27,236.41
Interest General Mortgage Bonds.....	90,490.34
Bond Commissions and Expense.....	39,770.00
Interest on Floating Debt.....	11,387.57
Total Deductions.....	<u>168,884.32</u>
Net Loss Year Ended December 31, 1911....	<u>*\$8,350.92</u>

SCHEDULE 6.

Arkansas Natural Gas Company.

Arkansas Pipe Line Company.

Pine Bluff Natural Gas Company.

Consolidated Detailed Operating Report for Year Ended December 31, 1912.

Gas Department.

Gross Earnings:

Gas Sales.....	\$610,400.31
Field Gas Sales.....	64,211.65
Total Gross Earnings.....	\$674,611.96

Operating Expenses:

Gas Purchases.....	\$21,623.16
--------------------	-------------

Maintenance:

Changing Construction.....	\$574.86
Repair to Lines.....	6,602.47
Repair to Wells.....	127.81
Repair to Service Lines,	
Meters and Regulators	1,131.29
Repairs to Buildings....	108.58
Repairs to Comp. Sta.	
Equip.	4,040.98
Repairs to Tel. & Tel.	
Lines	3,687.86
Miscellaneous	156.35

Total Maintenance.....	16,430.20
------------------------	-----------

Conducting Business:

operating Lines.....	\$32,031.20
operating Wells.....	1,638.08
etting Meters & Regula-	
tors, Reading Meters &	
Collecting	15,587.88
operating Comp. Stations	16,652.85
operating Tel. & Tel.	
Lines	3,311.43
ivary	2,368.95
salaries Officers & Supt.	23,354.92
amages	1,861.40
axes	49,969.72
lease Rentals.....	28,424.89
ell Rentals.....	1,900.00
easing	14,989.42
ffice Expense.....	30,276.46
ools and Supplies.....	1,358.80
egal Expense.....	6,901.56
ngineering	3,380.51
iscellaneous	2,309.81
freight	1,913.48
nd Gas Accounts.....	70.36

Total Conducting Business... 238,301.72

Total Operating Expense & Taxes..... 276,355.08

Net Earnings from Gas Operations (For'd). \$398,256.88

Net Earnings from Gas Operations (Brought
For'd) \$398,256.88

Other Income:

unk Sales.....	\$224.87
real Estate Rental.....	292.00
terest on Bank Balance.....	94.76

Total Other Income..... 611.63

Total \$398,868.51

Deductions:

old Development Work Charged	
Off.....	\$25,478.36
cial Adjustments.....	24,797.25

Total Deductions..... 50,275.61

Net Earnings Gas Department..... \$348,592.90

Oil Department.

Gross Earnings:

Oil Sales.....	\$63.00
Total Oil Earnings.....	\$63.00
No Expenses for year in Oil Department.....	.00
Net Earnings Oil Department.....	\$63.00

Recapitulation.

Net Earnings from Gas Operations.....	\$348,592.90
Net Earnings from Oil Operations.....	63.00
Total Earnings.....	\$348,655.90
Deductions:	
Bond Interest.....	\$243,860.00
Interest on Floating Debt.....	76,295.66
Total Deductions.....	320,155.66
Net Income.....	\$28,500.24

SCHEDULE 7.

Arkansas Natural Gas Company.

Arkansas Pipe Line Company.

Pine Bluff Natural Gas Company.

Consolidated Detailed Operating Report for Year Ended December 31, 1913.

Gas Department.

Gross Earnings:

Gas Sales.....	\$796,283.36
Field Gas Sales.....	53,897.36
Total Gross Earnings.....	\$850,180.72

Operating Expenses:

Gas Purchased.....	\$58,014.00
--------------------	-------------

Maintenance:

Changing of Construction	\$724.38
Repair of Lines.....	8,874.93
Repair of Wells.....	657.02
Repair of Service Lines.....	128.10
Repair Meters and Regulators	2,149.12
Repair of Buildings.....	189.61
Repair Comp. Sta. Equipment	9,393.28
Repair Tel. & Tel. Equipment	2,419.95
Miscellaneous	2,735.83
Adjustments	27,169.42
 Total Maintenance.....	 54,441.64

Conducting Business:

Operating Lines.....	\$24,966.66
Operating Wells.....	4,834.55
Setting Meters & Reg. Pressure	8,640.84
Reading Meters & Collecting	5,030.49
Operating Compressing Station	18,296.20
Operating Tel. & Tel. Lines	1,450.10
Auto Livery and Barn..	1,126.30
Salaries Officers & Supt.	22,622.50
Damages	9,422.87
Taxes	31,389.44
Lease Rentals.....	21,571.89
Well Rentals.....	1,650.00
Leasing	7,583.44
Office Expense.....	29,814.94
Tools and Supplies.....	886.58
Legal Expense.....	7,910.76
Engineering	2,576.13
Miscellaneous	4,387.01
Freight	1,856.06
 Total Conducting Business..	 206,016.76
Total	\$318,472.40

Other Expense:

Experimental Burners..	\$321.98
Wild Wells.....	98.23
Bad Gas Accounts.....	4,886.61
Income Tax Coupons...	529.00

Total Other Expense.....	5,835.82
--------------------------	----------

Operation & Taxes (For'd)	\$324,308.22	\$850,180.72
335		

Operations and Taxes (Brought For'd)	\$324,308.22	\$850,180.72
Depreciation	224,462.71	

Total Operating Expense.....	548,770.93
------------------------------	------------

Net Earnings from Operations.....	\$301,409.79
-----------------------------------	--------------

Other Income:

Rentals from Real Estate.....	\$419.00
Special Interest.....	2,914.27
Interest Earnings.....	338.48
Junk Sales.....	66.33
R. R. Refunds.....	44.24

Total Other Income.....	3,782.32
-------------------------	----------

Total	\$305,192.11
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Deductions:

Field Development Charged Off....	\$3,516.51
Special Adjustments.....	19,283.17

Total Deductions.....	22,799.68
-----------------------	-----------

Net Earnings Gas Department.....	\$282,392.43
----------------------------------	--------------

Oil Department.

Gross Sales.....	\$1,990.59
Expenses, None.....	.00

Net Earnings from Oil Operations.....	\$1,990.59
---------------------------------------	------------

Recapitulation.

Gross Earnings Gas Department.....	\$282,392.43
Gross Earnings Oil Department.....	1,990.59
<hr/>	
Total Net Earnings.....	\$284,383.02
Deductions:	
Interest on Bonds.....	\$243,405.00
Interest on Floating Debt.....	71,031.75
Commission & Expense.....	3,655.58
Profit & Loss Adjustment.....	[7,196.46]*
<hr/>	
Total Deductions.....	310,895.87
Net Loss.....	[\$26,512.85]*

SCHEDULE 8.

Arkansas Natural Gas Company.

Arkansas Pipe Line Company.

Pine Bluff Natural Gas Company.

Consolidated Detailed Operating Report for Year Ended December 31, 1914.

Gas Department.

Gross Earnings:

Domestic Gas Sales	\$516,103.25
Industrial Gas Sales	377,881.55
Oil Gas Sales	48,292.00
<hr/>	
Total Gross Earnings	\$942,276.80

Operating Expenses:

Purchased	\$120,840.30
-----------------	--------------

Prospecting & Lease Expense:

Selling & Paying Rental	\$5,217.52
Rental	26,697.91
Ice Expense	4,003.68
<hr/>	
Total	35,919.11

*Red in copy.]

Production Expense:

Operating Wells and Lines	\$8,176.30
Repairing Wells and Lines	1,201.24
Well Rentals	2,150.00
Drilling Wells	34,647.99
 Total	 46,175.53

Transportation Expense:

Main Line	\$18,216.42
Hot Springs Line	3,559.28
Pine Bluff Line.....	2,805.63
Field Lines	4,511.39
 Total Lines ...	 \$29,092.72
Telephone Lines	4,751.69
Compressing Stations..	47,464.67
 Total	 81,309.08

Distribution Expense:

Pine Bluff District....	\$9,241.70
Hope District	6,549.92
Prescott District	1,452.21
Gurdon District	998.32
Arkadelphia District ..	2,894.55
Malvern District	4,105.76
Benton District	2,462.97
Sheridan District	397.35
Vivian District	4,510.74
General District	2,580.83
 Total	 35,194.35

General & Miscellaneous:

Little Rock District...	\$3,784.11
Salaries & Expense—	
Supt.	19,609.86
Legal	3,868.63
Engineering	2,096.43
Little Rock Office	4,086.31
Pittsburgh Office	18,099.55
Insurance	2,288.07
Miscellaneous	5,943.02
	 59,775.98
Totals (For'd)	 \$379,214.35
	 \$942,276.80

337 Totals (Brought For'd) ... \$379,214.35 \$942,276.80

Taxes 42,544.18

Total Operating Expenses
and Taxes \$421,758.53

Depreciation 157,320.98

Total Operating Expense 579,079.51

Net Earnings from Operations \$363,197.29

Other Income:

Rentals from Real Estate \$528.55

Special Purchase Contracts 264.04

Special Interest 5,802.90

Interest on Bank Balance 28.73

Total Other Income 6,624.22

Total \$369,821.51

Deductions:

Field Development Charged Off ... \$2,787.83

Special Adjustments 35,704.00

Total Deductions 38,491.83

Net Earnings—Gas Department \$331,329.68

Oil Department.

Gross Sales \$2,693.77

Expenses:

Farm Expense 4,902.69

Net Earnings Oil Department \$[2,208.92]*

Recapitulation.

Net Earnings Oil Department [2,208.92]*

Net Earnings Gas Department \$331,329.68

Total Net Earnings \$329,120.76

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Deductions:

Interest on Bonds	\$243,105.00
Interest on Floating Debt	77,726.23
Profit & Loss Adjustments	204.03

Total Deductions	321,035.26

Net Income	\$8,085.50

338

SCHEDULE 9.

Arkansas Natural Gas Company.

Operating Report for Year Ended December 31, 1915.

Gas Department.

Gross Earnings:

Gas Sales	\$833,820.80
Field Gas Sales	14,029.34

Total Gas Sales	\$847,850.14

Expenses:

Gas Purchases	\$211,172.32
---------------------	--------------

Maintenance:

Changing Construction	\$27,720.82
Repairs to Lines	23,846.58
Repairs to Wells	217.36
Repairs to Service Lines	417.93
Repairs to Meters & Regulators	4,140.57
Repairs to Buildings	32.05
Repairs to Comp. Sta. Equipment	8,036.79
Repairs to Tel. & Tel. Lines	2,575.73
Drilling Wells	11,001.39
Miscellaneous	2,695.78

Total Maintenance	80,685.00

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Conducting Business:

Operating Lines	\$20,426.19
Operating Wells	4,225.36
Setting Meters & Regu- lating Pressure	6,915.24
Reading Meters & Col- lecting	5,037.16
Operating Comp. Sta- tions	31,912.78
Operating Tel. & Tel. Lines	222.46
Auto Livery & Barn...	1,493.38
Salaries Officers & Supt.	20,602.85
Damages	5,588.53
Taxes	46,476.66
Lease Rentals	18,485.23
Well Rentals	1,300.00
Leasing	2,070.12
Office Expenses	25,736.91
Tools and Supplies	557.68
Legal Expense	7,783.31
Engineering	1,441.04
Miscellaneous	4,079.63
Freight	2,411.81
Liability Insurance ..	2,506.52
Junk	899.65
Bad Gas Accounts ...	1,707.83

Total Above Items \$211,880.34

Less: Oil Expense which
was included

2,451.64

Total Conducting Business .. 209,428.70

Total Operating Expense &
Taxes

\$501,286.02

Depreciation

36,272.62

Total Operating Expenses

537,558.64

Net Earnings from Operations (For'd)....

\$310,291.50

339 Net Earnings from Operations (Brought
For'd)

\$310,291.50

Other Income:

Rentals from Real Estate	\$1,145.00
Special Purchase Contracts	1,634.02
Special Interest	1,228.13
Interest Earnings	99.47
Total Other Income	4,106.62
Total Income	\$314,398.12

Deductions:	
Special Adjustments	25,181.64
Net Earnings—Gas Department	\$289,216.48

Oil Department.

Gross Sales	\$2,688.74
Operating Expenses:	
Operation and Taxes	2,451.64
Net Earnings—Oil Department	\$237.10

Recapitulation.

Net Earnings Gas Department	\$289,216.48
Net Earnings Oil Department	237.10
Total Net Earnings	\$289,453.58
Deductions:	
Interest on Bonds	\$242,925.00
Interest on Floating Debt	73,750.59
Profit & Loss Adjustments	4,062.04
Total Deductions	320,737.63
Net Income	\$[31,284.05]*

[*Red in copy.]

340

SCHEDULE 10.

Arkansas Natural Gas Company.

Operating Report for Year Ended December 31, 1916.

Gas Department.

Gross Earnings:

Domestic Gas Sales.....	\$524,898.62
Industrial Gas Sales.....	453,540.12
Field Gas Sales.....	37,408.72
Total Gas Sales.....	\$1,015,847.46

Expense:

Gas Purchased.....	\$260,806.13
--------------------	--------------

Prospecting & Lease Expense:

Leasing & Paying Rentals \$14,016.77	
Lease Rentals	27,582.15
Office Expense.....	2,544.13
Total	44,143.05

Production Expense:

Operating Wells & Lines. \$4,377.49	
Repairing Wells & Lines. 1,850.97	
Wells Rentals.....	1,395.37
Drilling Wells.....	56,379.82
Total	64,003.65

Transportation Expense:

Main Line.....	\$23,433.98
Hot Springs Line.....	583.28
Pine Bluff Line.....	1,713.02
Field Lines.....	6,385.55
Total Lines.....	\$32,115.83
Telephone Lines.....	8,219.59
Compressing Stations... 34,280.36	
Total	74,615.78

Distribution Expense:

Pine Bluff District.....	\$9,724.04
Hope "	6,287.81
Prescott "	1,785.10
Gurdon "	1,309.63
Arkadelphia "	2,864.15
Malvern "	3,003.65
Benton "	3,391.19
Sheridan "	685.88
Vivian "	3,206.55
General "	2,074.60
Total	34,332.60

General & Miscellaneous:

Little Rock District.....	\$3,749.51
Salary & Expense—Supt.	18,315.49
Legal	11,628.74
Engineering	2,941.73
Little Rock Office.....	18,640.02
Pittsburgh Office.....	5,001.69
Miscellaneous	14,297.10
Advertising	855.08
Insurance	2,927.22
Taxes	39,827.92
	118,184.50
341 Totals (For'd).....	\$596,085.71
Total (Brought For'd).....	\$596,085.71
Depreciation	119,161.65
Total Operating Expense.....	715,247.36
Net Earnings from Operations.....	\$300,600.10
Other Income:	
Field Earnings.....	1,256.91
Rentals from Real Estate.....	5,410.86
Special Gas Purchase Contracts.....	5,752.00
Miscellaneous	923.89
Total Other Income.....	13,343.66
Total	\$313,943.76

Deductions:

Special Adjustments.....	14,179.22
--------------------------	-----------

Net Earnings—Gas Department.....	<u>\$299,764.54</u>
----------------------------------	---------------------

Oil Department.

Gross Sales.....	\$6,263.61
------------------	------------

Operating Expense:

Operation and Taxes.....	<u>4,208.22</u>
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Net Earnings—Oil Department.....
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Recapitulation.

Net Earnings Gas Department.....	\$299,764.54
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Net Earnings Oil Department.....	<u>2,055.39</u>
----------------------------------	-----------------

Total Net Earnings.....	\$301,819.93
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Deductions:

Interest on Bonds.....	\$173,145.00
------------------------	--------------

Interest on Floating Debt.....	71,997.96
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Bond Commission and Expense.....	50,000.00
----------------------------------	-----------

Profit and Loss Adjustments.....	<u>6,676.97</u>
----------------------------------	-----------------

Total Deductions.....	301,819.93
-----------------------	------------

Net Income.....	<u>\$.00</u>
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NOTE.—At the close of 1916, the amount charged as Depreciation is the exact amount of Net Income prior to such charge.

Akansas Natural Gas Company.

Operating Report.

For Year Ended December 31, 1917.

Gas Department.

Gross Earnings:

Domestic Gas Sales.....	\$654,843.94
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Industrial Gas Sales.....	679,034.20
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Field Gas Sales.....	<u>26,617.38</u>
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Total Gas Sales	\$1,360,495.52
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Expense:

Gas Purchased	\$350,067.22
---------------------	--------------

Prospecting & Lease Expense:

Leasing and Paying

Rentals	\$27,166.21
Lease Rentals.....	61,535.06
Office Expenses.....	6,303.87

Total	95,005.14
-------------	-----------

Production Expense:

Operating Wells & Lines.	\$9,884.28
Repairing Wells & Lines.	1,238.46
Wells Rentals.....	2,658.26
Drilling Wells.....	83,679.35

Total	97,460.35
-------------	-----------

Transportation Expense:

Main Line.....	\$15,017.06
Hot Springs Line	1,604.53
Pine Bluff Line.....	779.73
Field Lines.....	2,649.02

Total Lines.....	\$20,050.34
Telephone Lines.....	6,508.24
Compressing Stations...	67,349.43

Total	99,908.01
-------------	-----------

Distribution Expense:

Pine Bluff District.....	\$10,589.35
Hope "	4,811.30
Prescott "	1,552.95
Gurdon "	797.43
Arkadelphia "	3,288.37
Malvern "	1,810.09
Benton "	2,614.09
Sheridan "	589.91
Vivian "	8,398.49
General "	1,830.65

	36,282.63
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General & Miscellaneous:

Little Rock District.....	\$2,577.94
Salary & Expense Supt.	19,709.73
Legal	3,843.96
Engineering	3,133.82
Little Rock Office.....	18,777.83
Pittsburgh Office.....	1,847.68
Miscellaneous	22,198.98
Advertising	1,037.21
Bonus	10,113.20
Insurance	4,017.22
Taxes	56,034.02
	143,291.59
Depreciation	301,737.58
Total Operating Expenses.....	\$1,117,752.52
Net Earnings from Operations (For'd)....	\$242,743.00
343 Net Earnings from Operations (Brought For'd)	\$242,743.00

Other Income:

Field Earnings.....	\$1,378.97
Rental From Real Estate.....	42,210.04
Special Purchase Contracts.....	3,094.28
Miscellaneous	31,887.21
	78,570.50
Total Other Income.....	78,570.50
Total	321,313.50

Deductions:

Special Adjustments.....	8,733.97
Net Earnings—Gas Department.....	\$312,579.53
Oil Department.	

Gross Sales.....	\$9,237.77
------------------	------------

Operating Expense:

Operation and Taxes.....	\$5,283.10
Depreciation	3,281.36
	8,564.46
Total Operating Expenses.....	8,564.46
Net Earnings—Oil Department.....	\$673.31

Recapitulation.

Net Earnings Gas Department.....	\$312,579.53
Net Earnings Oil Department.....	673.31
Total Net Earnings.....	\$313,252.84
Deductions:	
Interest on Bonds.....	\$156,624.00
Interest on Floating Debt.....	24,329.96
Profit & Loss Adjustments.....	[7,631.62]*
Total Deductions.....	173,322.38
Net Income.....	\$139,930.56

344

SCHEDULE 12.

Arkansas Natural Gas Company.

Operating Report for Year Ended December 31, 1918.

Gas Department.

Domestic Gas Sales	\$765,765.06
Industrial Gas Sales	856,261.62
Field Gas Sales	70,327.15
Total Gas Sales	\$1,692,353.83
Expenses:	
Gas Purchased	\$466,320.86
Prospecting & Lease Expense:	
Leasing and Paying Rentals	\$24,051.42
Lease Rentals	66,266.25
Office Expense	8,893.68
	99,211.35

Production Expense:

Operating Wells & Lines	\$15,335.50
Repairing Wells & Lines	2,723.00
Well Rentals	7,426.44
Drilling Wells	116,706.07
	142,191.01

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Transportation Expense:

Main Line	\$54,546.58
Hot Springs Line.....	2,073.25
Pine Bluff Line	553.36
Field Lines	4,524.27
	<hr/>
Total Lines	\$61,697.46
Telephone Lines	9,502.38
Compressing Stations ...	85,361.29
	<hr/>
	156,561.13

Distribution Expense:

Pine Bluff District.....	\$11,685.26
Hope "	4,501.03
Prescott "	1,759.50
Gurdon "	989.23
Arkadelphia "	3,029.45
Malvern "	2,275.91
Benton "	2,860.95
Sheridan "	704.75
Vivian "	8,545.64
General "	2,123.18
	<hr/>
	38,474.90

General & Miscellaneous:

Little Rock District....	\$1,806.07
Salaries & Expense, Supts.	23,315.19
Legal	4,504.85
Engineering	3,855.62
Little Rock Office.....	20,779.40
Pittsburgh Office	1,695.72
Miscellaneous	23,628.80
Taxes	76,983.94
Advertising	1,628.18
Insurance	4,377.75
	<hr/>
Depreciation	162,575.52
	<hr/>
	475,094.27

Total Operating Expense..... 1,540,429.04

Net Earnings from Operations (For'd) ... \$151,924.79

Net Earnings from Operations (Brought
For'd) \$151,924.79

Other Income:

Field Earnings	\$70,549.31
Rentals from Real Estate.....	1,411.02
Special Purchase Contracts	9,076.49
Miscellaneous	13,601.42
	<hr/>

Total Other Income	94,638.24
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Total	\$246,563.03
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Deductions:

Special Adjustments	14,449.79
Net Earnings—Gas Department.....	\$232,113.24
	<hr/>

Oil Department.

Gross Sales	\$18,477.48
-------------------	-------------

Operating Expense:

Operation and Taxes	\$19,962.24
Depreciation	11,595.08
	<hr/>
Total Operating Expense.....	31,557.32

Net Earnings—Oil Department.....	\$[13,079.84]
----------------------------------	---------------

Recapitulation.

Net Earnings, Gas Department	\$232,113.24
Net Earnings, Oil Department	[13,079.84]*

Total Net Earnings	\$219,033.40
--------------------------	--------------

Deduction:

Interest on Bonds	\$148,570.00
Interest on Floating Debt	18,252.80
Profit & Loss Adjustments	2,022.71
	<hr/>
Total Deductions	168,845.51
	<hr/>
Net Income	\$50,187.89

[*Red in copy.]

SCHEDULE 13.

Arkansas Natural Gas Company.

Operating Report for Year Ended December 31, 1919.

Gas Department.

Domestic Gas Sales	\$832,763.01
Industrial Gas Sales	762,420.72
Field Gas Sales	138,842.23

Total Gas Sales	\$1,734,025.96
-----------------------	----------------

Expenses:

Gas Purchased	\$494,945.65
---------------------	--------------

Prospecting & Lease Expense:

Leasing and Paying Rentals	\$41,225.08
Lease Rentals	145,531.66
Office Expense	7,731.80
	194,488.54

Production Expense:

Operating Wells & Lines	\$30,828.80
Repairing Wells & Lines	5,912.53
Well Rentals	11,211.34
Drilling Wells	151,969.01
	199,921.68

Transportation Expense:

Main Line	\$60,919.71
Hot Springs Line	2,218.19
Fine Bluff Line	2,864.43
Field Lines	2,854.00
Total Lines	\$68,856.33
Telephone Lines	19,235.82
Compressing Stations	129,787.32
	217,879.47

Distributing Expense:

Pine Bluff District	\$16,647.58
Hope " "	7,349.89
Prescot " "	2,703.41
Gurdon " "	2,271.34
Arkadelphia " "	4,581.15
Malvern " "	3,439.13
Benton " "	5,706.09
Sheridan " "	1,066.73
Vivian " "	8,460.85
General	2,129.54
	54,355.71

General and Miscellaneous:

Little Rock District	\$3,684.89
Salaries & Expense—	
Supts.	28,536.27
Legal	5,068.80
Engineering	5,076.39
Little Rock Office	36,671.95
Pittsburgh Office	2,505.18
Miscellaneous	19,291.82
Advertising	1,776.43
Bonuses	6,577.50
Insurance	14,250.44
Taxes	79,551.44
Total	\$202,991.11
Less: Adjustments	42,988.87
	160,002.24
Depreciation	561,430.31

Total Operating Expenses 1,883,023.60

Net Earnings from Operations (For'd) . [\$148,997.64]*

347 Net Earnings from Operations (Brought
For'd) [\$148,997.64]*

Other Income:

Field Earnings	\$94,694.24
Rentals from Real Estate	1,681.00
Special Purchase Contracts	14,349.62
Miscellaneous	7,856.70
Total Other Income	118,581.56
Total	[30,416.08]*

[*Red in copy.]

Deductions:

Profit Adjustments	6,965.90
Net Earnings—Gas Department	<u>[\$37,381.98]*</u>

Oil Department.

Loss Sales	\$270,805.22
------------------	--------------

Operating Expenses:

Operating and Taxes	\$112,031.28†
Depreciation	76,404.31
Total Operating Expense	<u>188,435.59</u>
Net Earnings—Oil Department	<u>\$82,369.63</u>

Recapitulation.

Net Earnings—Gas Department . .	[\$37,381.98]*
Net Earnings—Oil Department . .	82,369.63
Total Net Earnings	<u>\$44,987.65</u>

Deductions:

Interest on Bonds	\$144,196.17
Interest on Floating Debt	24,382.01
Profit & Loss Adjustments	12,803.09
Total Deductions	<u>181,381.27</u>
Net Income	<u>[\$136,393.62]*</u>

†This Figure is made up as follows:

Operating Expense	\$197,466.77
General and Taxes	176,171.94
Total	<u>\$373,638.71</u>
Profit Adjustments	261,607.43
Net Operating Expense and Taxes	<u>\$112,031.28</u>

SCHEDULE 14.

Arkansas Natural Gas Company.

Operating Report for Nine Months Ended September 30, 1920.

Gas Department.

Domestic Gas Sales	\$754,777.71
Industrial Gas Sales	786,537.97
Field Gas Sales	113,467.74
Gas Sales—Bull Bayou	15,923.80
Total Gas Sales	\$1,670,707.22

Expense:

Gas Purchased	\$425,765.65
---------------------	--------------

Producing & Lease Expense:

Leasing & Paying Rent- als	\$26,266.05
Lease Rentals	115,168.31
Office Expense	5,411.54
	146,845.90

Production Expense:

Operating Wells & Lines	\$42,438.27
Repairing " " "	8,153.60
Well Rentals	7,784.32
Drilling Wells	129,121.21
	187,497.40

Transportation Expense:

Main Line	\$49,508.12
Hot Springs Line	1,890.57
Pine Bluff Line	4,590.46
Field Lines	1,450.57
Total Lines	\$57,439.72
Telephones Lines	12,986.43
Compressing Stations ..	111,993.34
	182,419.49

Distribution Expense:

Pine Bluff District	\$18,889.85
Hope "	9,201.17
Prescott "	5,488.26
Gurdon "	2,995.85
Arkadelphia "	3,748.14
Malvern "	3,233.34
Benton "	4,912.85
Sheridan "	1,000.45
Vivian "	5,071.92
General	7,882.54
	<hr/>
	62,424.37

General & Miscellaneous:

Little Rock District	\$2,768.03
Salaries & Expenses	
Supts.	16,691.57
Legal	8,501.23
Engineering	4,270.42
Shreveport Office	27,661.78
Miscellaneous Expense	24,313.40
Pittsburgh Office	14,063.13
Taxes	77,437.30
Advertising	8,911.68
Insurance	11,069.16
	<hr/>
	195,687.70
Total Operating Expense & Taxes	1,200,640.51
Net Earnings from Operations (For'd)	\$470,066.71
349 Net Earnings from Operations (Brought For'd)	\$470,066.71

Other Income:

Field Earnings	\$92,785.02
Rentals from Real Estate	1,656.25
Special Gas Purchase Contracts	1,523.70
Miscellaneous	28,084.05
	<hr/>
Total Other Income	124,049.02
	<hr/>

Deductions:

Special Adjustments	11,555.61
Net Earnings—Gas Department	\$582,560.12
	<hr/>

Oil Department.

Oil Earnings—Louisiana	\$4,365,525.63
Oil Earnings—Texas	161,398.87
Total Oil Sales	\$4,526,924.50

Expense:

Pumper Labor	\$25,900.05
Roustabout Labor	16,223.48
Other Labor	17,459.77
	—————
Teaming	\$59,583.30
Well Repairs	1,617.26
Rig Repairs	\$29,137.35
Other Repairs	4,496.87
	—————
Tools and Supplies	5,631.26
Fuel and Water	39,265.48
Miscl. Expense	\$5,754.57
	—————
	38,204.19
	20,642.61
	64,601.37
Total Lifting Expense	\$165,067.41
Miscellaneous	4,204.14
Drilling Costs	145,926.42
Gasoline Expense	3,073.42
	—————
Total	\$318,271.39

General Expense:

Salary & Expense of General Officers	\$23,677.34
Clerical Salaries	35,822.55
Office Expense	6,977.68
Legal	7,361.61
Insurance	829.60
Lease Rentals	44,580.13
Well Rentals	1,520.46
Leasehold Expense	32,455.41
Warehouse Expense	11,064.07
Pipe Line Expense	1,193.79
Telegraph Line Expense	1,311.31
	—————
Totals (For'd)	\$166,793.95
	—————
	\$318,271.39
	—————
	\$4,526,924.50

350	Totals (Brought For'd)	\$166,793.95	\$318,271.39	\$4,526,924.50
	Tank Farm Expense ..	882.58		
	Outside Operations ..	134,637.42		
	<hr/>			
	Total	\$302,313.95		
	Taxes	135,773.46		
	<hr/>			
	Total Genl. Expense	438,087.41		
	<hr/>			
	Total Operating Expense & Taxes		756,358.80	
	<hr/>			
	Net Earnings from Operations		\$3,770,565.70	
	<hr/>			
	Other Income:			
	Miscellaneous Oil Earnings		27,863.96	
	<hr/>			
	Net Earnings—Oil Department		\$3,798,429.66	
	<hr/>			

Recapitulation.

Net Earnings Gas Department	\$582,560.12	
Net Earnings Oil Department	3,798,429.66	
<hr/>		
Total Net Earnings		\$4,380,989.78
Deductions:		
Interest on Bonds	\$87,944.99	
Interest on Floating Debt	20,518.62	
Profit & Loss Adjustments	11,307.64	
<hr/>		
Total Deductions		119,771.25
<hr/>		
Net Income		\$4,261,218.53
<hr/>		

351 SCHEDULE 15.

Arkansas Natural Gas Company.

Arkansas Pipe Line Company.

Pine Bluff Natural Gas Company.

Depreciation Charges.

Year.	Gas.	Oil.	Total.
1913	\$224,462.71	\$.00	\$224,462.71
1914	157,320.98	.00	157,320.98
1915	36,272.62	.00	36,272.62
1916	119,161.65	.00	119,161.65
1917	301,737.58	3,281.36	305,018.94
1918	475,094.27	11,595.08	486,689.35
1919 Including Adjustment in 1920..	561,430.31	76,404.31	637,834.62

SCHEDULE 16.

Arkansas Natural Gas Company.

*Summary of Repairs Included in Operating Expenses, by Year
1910 to 1920, Both Inclusive.*

Year of 1910.

Changing Construction.....	\$10.00
Repairs to Wells.....	1.00
Total for 1910.....	\$11.00

Year of 1911.

Changing Construction.....	\$1,214.66
Repair of Lines.....	237.84
Repair of Service Lines.....	30.13
Repair Meters & Regulators.....	99.30
Repair Buildings.....	10.00
Repair Tel. & Tel. Equipment.....	739.60
Total for 1911.....	2,331.53

Year of 1912.

Changing Construction.....	\$574.86
Repair to Lines.....	6,602.47
Repair to Wells.....	127.81
Repair Service Line, Meters & Regula....	1,131.29
Repair to Buildings.....	108.58
Repair to Comp. Station Equipment....	4,040.98
Repair Tel. & Tel. Equipment.....	3,687.86
Total for 1912.....	16,273.85

Year of 1913.

Changing Construction.....	\$724.38
Repair of Lines.....	8,874.93
Repair of Wells.....	657.02
Repair of Service Lines.....	128.10
Repair Meters & Regulators.....	2,149.12
Repair to Buildings.....	189.61
Repair Compressing Sta. Equipt.....	9,393.28
Repair Tel. & Tel. Equipment.....	2,419.95
Total for 1913.....	24,536.99

Year of 1914.

Changing Construction.....	\$1,666.70
Repair of Line.....	9,994.89
Repair of Wells.....	658.66
Repair Service Lines.....	396.24
Repair Meters & Regulators.....	2,994.89
Repair to Buildings.....	255.57
Repair Compressing Stations.....	13,636.77
Repair Tel. & Tel. Equipment.....	3,683.57
Total for 1914.....	33,287.29

353

Year of 1915.

Changing Construction.....	\$27,720.82
Repair to Line.....	23,846.58
Repair to Wells.....	217.36
Repair to Service Lines.....	417.93
Repair to Meters & Regulators.....	4,140.57
Repair to Buildings.....	32.05
Repair Compres. Sta. Equipment.....	8,036.79
Repair Tel. & Tel. Equipment.....	2,575.73
Total for 1915.....	\$56,987.83

Year of 1916.

Changing Construction.....	\$6,720.77
Repair of Lines.....	15,274.11
Repair of Wells.....	1,829.36
Repair Service Lines.....	817.22
Repair Meters & Regulators.....	7,468.73
Repair to Buildings.....	127.58
Repair Comp. Sta. Equipment.....	4,707.39
Repair Tel. & Tel. Equipment.....	6,267.06
Total for 1916.....	43,212.22

Year of 1917.

Production:

Changing Construction....	\$27.88
Repair to Wells & Lines....	266.21
Repair to Measuring Stations	782.81
Warehouse & Material Re-	
pairs	161.56
	\$1,238.46

Transportation:

Main Line.....	\$3,793.34
Hot Springs Branch.....	929.55
Pine Bluff Branch.....	385.04
Field Lines.....	353.01
Compressing Stations.....	4,453.95
	9,914.89

Distribution:

Changing Construction.....	\$3,954.58
Repair to Lines.....	267.95
Repair to Services.....	463.72
Repair Meters & Regulators	5,733.04
Miscl. Repairs.....	128.86
	10,548.15

Total for 1917..... 21,701.50

354

Year of 1918.

Production:

Repairs to Wells & Lines...	\$1,376.35
Repairs to Measuring Sta- tions	444.31
Warheouse Material Re- pairs	902.34
	\$2,723.00

Transportation:

Main Line.....	\$41,295.29
Hot Springs Branch.....	769.42
Pine Bluff Branch.....	68.60
Field Lines.....	1,574.80
Compressing Stations.....	5,756.66
	50,464.77

Distribution:

Changing Construction.....	\$2,263.21
Repair of Lines.....	280.94
Repair to Service Lines.....	365.72
Repair to Meters & Regu- lators	4,268.14
Miscellaneous Repairs.....	929.46
	8,107.47

Total for 1918..... \$61,295.24

Year of 1919.

Production:

Changing Construction.....	\$1,023.64
Repairs to Wells & Lines....	2,170.54
Repairs to Measuring Sta- tions	1,779.97
Warehouse Material Supplies	938.38

\$5,912.53

Transportation:

Main Line.....	\$48,431.74
Hot Springs Branch.....	916.56
Pine Bluff Branch.....	1,759.70
Field Lines.....	619.11
Compressing Stations.....	18,790.89

70,518.00

Distribution:

Changing Construction.....	\$3,198.92
Repair to Lines.....	894.15
Repair to Services.....	560.64
Repairs to Meters & Regula- tors	4,483.67
Miscellaneous Repairs.....	5,603.36

14,740.74

Total for 1919..... 91,171.27

55

Year of 1920 (to September 30, 1920).

Production:

Changing Construction.....	\$122.05
Repair to Wells & Lines....	7,290.03
Repair to Measuring Sta- tions	361.52
Warehouse Material Supplies	380.00

\$8,153.60

Transportation:

Main Line.....	\$34,327.82
Hot Springs Branch.....	284.99
Pine Bluff Branch.....	3,426.27
Field Lines.....	917.24
Compressing Stations.....	13,322.04

52,278.36

Distribution:

Changing Construction.....	\$2,231.27
Repair to Lines.....	922.75
Repair to Services.....	1,057.20
Repair to Meters & Regulators	9,387.15
Miscellaneous Repairs.....	1,336.19

	14,934.56
Total for 1920.....	\$75,366.52

356 This report was exhibited at the last hearing. So far as I know, the report corresponds with the data they have supplied on the same matters. Mr. Smith, I believe, at the last hearing kind of compared it together with some figures they have and showed adjustments between the two as differences of opinion. Schedule One, Plant Expense, represents what I ascertained was the total amount as shown by their books expended on the plant in the gas department. The depreciation that I showed there against plant account appeared on their books. Up to the year 1919 I did not find many charges to the oil department; they were small; we found some expenses certain years in the oil department; that is all reflected in my report. The report speaks for itself.

Cross-examination:

In Schedule One I show total amount of investment in property and plant of the gas department, as of date September 30, 1920, to be \$5,881,496.71. I arrived there in October and made up my figures as of the close of business September 30th. The deduction from capital investment of \$1,832,064.44 as "Reserve for Depreciation" is my method of making up the capital investment account. They originally deducted the depreciation from capital investment, but then later on restored it and put it in "Reserve for Depreciation." I have taken \$4,049,432.27 as capital investment September 30, but the books show a balance of \$5,881,000.00, and they add some other stuff on that, stock issued for original gas fields and gas acreage. I did not include that stock in the investment account and put it in my statement because I was not able to apportion it between gas and oil; but I put it in our balance sheet. I ascertained that a part of the \$5,500,000.00 of stock was issued when the company went in the gas business and for gas leases, but \$4,000,000.00 of it was issued as a bonus with the bonds.

357 On page one of Schedule One there appears a charge under Production Cost of un-operated acreage, \$169,382.83. That was the cost of acquiring what un-operated acreage they had on hand at that time. Schedule Three is a joint property account of oil and gas. We treated these as joint items because we were unable to tell which was used for gas and which for oil. My report shows that the company divided the general overhead expense in operations

between oil and gas on a fifty-fifty basis after the year 1919; this applied to the overhead and office employees. Wherever a man worked solely in the oil department they charged it to oil, but where they were joint employees they put it fifty-fifty to oil and gas. In my report set out what salaries were paid to the various officers. "Farm expense" is the expense of the oil farms; I have forgotten the names. Turning to Schedule Thirteen, for the year 1913 in the gas department I show there is a deficit after allowing for depreciation of \$3,381.98; in Schedule Fourteen I only bring the result up to September 30, 1920, to show net earnings of the gas department of \$82,560.12; at that time the company was carrying items of expense that we were not sure what to do with them. On their drilling operations the company waited until it got a full report before charging up the drilling cost, and when a well was abandoned they had to wait until a full report was received before entering the credits. The net earnings of \$4,261,218.53 for 1920 was largely on account of oil income.

Redirect examination:

While in Pittsburgh I attempted to get a list of the oil and gas leases; I filed a written request with Mr. Cole for them; he said they didn't have a complete record of them in Pittsburgh but we would have to go to Shreveport and get them. I told him we could have a man in Shreveport the next day from the Little Rock office, 58 but they refused to give us permission to go there and get them. I was unable to investigate and report on how that acreage was carried and paid for, and the extent of it. I examined the book entries regarding the leases but it didn't show the details. I found a lot of leases charged to oil; some charged to oil and some to gas. If I had been furnished with the leases I could not have told which was oil and which was gas, except by the record.

J. A. WHITLOW, on direct examination, testified:

I live at Pine Bluff, Arkansas; am an electrical and mechanical engineer. (Qualifications admitted). I have prepared an exhibit showing plant investment and the amount of earnings of the Arkansas Natural for the last six or eight years that I have gotten from the reports of Mr. Chase, which I here file as a part of my evidence as exhibit number one; there are two sheets to the exhibit. On the first sheet we have taken the going value of \$600,000.00 arbitrarily. On the next sheet, where the set-up is treated in the same way except that my value is established by turning the deficit back into capital. In this set-up I have taken the plant investment from Cole's Exhibit Five and from Mr. Chase's exhibit, which practically agree, having an amount of \$5,155,070.15, which has been explained, working capital of \$250,000.00 and going value of \$600,000.00; that makes a total value of \$6,005,070.15. Now, on that the company is entitled to a rate of earnings. For the sake of setting up depreciation I have taken off working capital and cut the value which should not be depreciated, which left it again \$4,-

505,070.00. Assuming a twenty-five year life of this whole property, or an annual depreciation of four per cent., that depreciation the first year is \$180,203.00; their net earnings that year are 359 \$506,855.00; that leaves a net after taking off depreciation of \$326,652.00, or a rate of return for that year of 5.45 per cent. Now, to get a fair value beginning the next year I deducted the depreciation for the next year and added the additions, which is in the last column there; that would be \$109,564.00 to their capital account. I got these figures for additions and also the net earnings from the exhibits of Mr. Cole and Mr. Chase, which checked. In the next to the last column on sheet one is set out the return on the fair value for that year after the annual depreciation has been allowed; the annual earnings above depreciation are the percentages set out in the last column, and range from 2.39 per cent. in 1915 to 10.52 per cent. in 1920; the average for that nine years is 6.57 per cent., and the average for the last four years is 8 6/10 per cent.

On the second page the figures are practically the same, except we have given no going value at the start but the deficit is turned into the capital account each year and used, the early losses determining the going value. To determine the losses I have assumed a fair return of 7 per cent. for the first five years and 8 per cent. for the last four after allowing for depreciation; I consider that a fair return for properties of this size and circumstances. I have used the straight-line method of determining the fair present value. Now, this last sheet has one disadvantage, that in the last four years we are depreciating going value, itself; that is incorrect and makes a higher sum for depreciation than the company is giving it. This deficit for the first five years I have added in for the going value; I think this runs to eight hundred thousand dollars. If they are allowed eight per cent. interest the deficit would be one per cent. more. I struck upon four per cent. for depreciation by assuming a twenty-five year life of the various elements making up this property; that is, an average life of twenty-five years, making a 360 straight-line depreciation of four per cent. a year. Of course,

the nature of this property is such that it would require a large replacement at one time, but I have for simplicity deducted the straight-line depreciation. I have not had an opportunity to make a valuation of the property. I do not know anything about the value of their leases. I cannot feel that the depreciation made by Mr. Kramer and Mr. Anderson of ten per cent. on the compressing station is a correct amount of depreciation, because these are gas engines and the natural life of machinery of that sort, even as well maintained as they are shown, of ten per cent. for ten years' life is almost unthinkable depreciation. The gas manufacturers themselves say you should depreciate eight per cent. a year; a simple depreciation of ten per cent. seems to be altogether too small. Then this depreciation is, I understand, altogether on the physical condition, while the actual depreciation would be the actual life of this plant; and if for some reason it will be put out of business at any particular time that should be the rate of depreciation, whether physical or of a different kind. If the machinery has been operated

almost continuously, and I think it has, they should not be more than sixty per cent. condition; it may be as low as fifty per cent. condition. Taking the main trunk pipeline which was laid in 1910 and 1911 and has been ten or eleven years in the ground, I absolutely do not think that seventy-five per cent. present condition is right. Well, I think about fifty per cent. is correct, but I couldn't feel at all certain; if they are lucky it is in fifty to fifty-five per cent. condition. There is so much data available on the life of steel pipe under various conditions that you are not speculating so much about maintenance. There is a great controversy raging between the steel and wrought iron people; this information is available to every engineer in the business, and he should have full knowledge of

what the average and historical life of steel pipe is under
361 these conditions, and I can't recall an instance where a claim of more than twenty years life has been made for steel pipe in the ground. We might grant, for the sake of being liberal, twenty-five years, making it four per cent. depreciation. I am connected with a company that has had experience in steel pipe. The Arkadelphia water plant had to renew last year twenty thousand feet of steel pipe that had been down only twenty years; the pipe was all about gone. The size of the pipe has something to do with it. Of course, this pipe which the gas company used was heavier and thicker and the deterioration would come from the outside only; that would mean, of course, some longer years. This water pipe didn't last twenty years in a nice, hilly town. This gas pipeline is working under a high pressure, so it will require less deterioration before it will be not usable; fifty-five per cent. present condition would be extremely liberal.

The depreciation in the distribution system is more nearly consistent than the main pipeline, but eighty per cent present condition seems to be pretty large. And you consider the meters at ninety-five per cent. I can't imagine a condition where meters are ninety-five per cent, especially gas meters: I think seventy would be about the right figure, including the meters for the distribution system.

I did not figure the four per cent allowed for depreciation included anything for hazard of the business. In my observation and experience in this company it would seem that the hazard has been off-set by luck. To illustrate, the El Dorado Gas Company was drilling for gas and brought in an oil well of about seventy thousand barrels a day; that is the company which supplies El Dorado with gas. I know positively from experience that the continual rate litigation the company has been in, the uncertainty as to what they are going to have to pay for gas, has caused many industries to go back to other fuels and probably accounts for three-quarters
362 of the loss of industrial business. (In answer to the Court, witness said) I do not mean to say that all industrials in 1921 had been operating as during normal times, but there are industrials that have had an increased business; this refers to public utilities. I am connected with the Pine Bluff Company; the Pine Bluff company in 1920 paid this company \$134,079.00 for gas: in 1921, \$47,438.00, yet its output is larger in 1921 than in 1920.

Now, some of the industries have shut down; I hardly think any entirely; such plants as laundries are going about as usual. The biggest consumer is the American Bauxite Company at Bauxite; that next to the Pine Bluff company is the largest consumer, but they are back on coal, averaging about twelve thousand tons per month up to the last three months of 1921 where it has fallen off considerably. But that company (American Bauxite Company) had discontinued using gas back in the early part of 1920 absolutely on account of this change in price of gas. The price of fuel oil has fallen and I am not prepared to say that the company would have had all the business of the Pine Bluff Company during all this time, but at the time the oil furnaces were installed at the Pine Bluff Company's plant this company was proposing the raise to forty-five cents a thousand for gas, and at that time before the rate became effective they installed the oil burners; in fact, they went to oil to avoid this increased cost. They took a year's contract for oil without any saving; we considered we were about breaking even, and we had some idea about what it would cost us.

Cross-examination:

Question. "Mr. Whitlow, you say that seven per cent would be a fair return to the gas company on this investment?"

Answer. "Yes, sir, when you are allowed depreciation, or allowed the depreciation as on the basis of that set-up, why, seven per cent is sufficient on an investment of this size. The ability to get 363 money into the business, that is the gauge of a fair return."

"In appearing before the Railroad Commission as traffic man for the Pine Bluff corporation rates for its electrical properties which have a perpetual life I have asked for eight per cent return."

Question. "Do you think that a gas property with all the hazards incident to a line two hundred and seventy-five miles long, that they should not receive; that kind of a property with all that is coming up unexpectedly, that they should not receive a higher rate of return than an electrical business that remains in business perpetually?"

Answer. "I wouldn't figure that on the return."

Question. "You are entitled to a return on your investment?"

Answer. "No, it depends upon the amount you invested, and the other conditions altogether; the organization which is handling it, and the size of the proposition. Money can't be obtained for less than ten per cent for some, but on a proposition of this size the men back of it and the weight of their —"

Question. "I am not asking you for your legal opinion."

Answer. "No, but I am trying to hold to what is found to be reasonable."

Question. "We do want to proceed with a little speed, and I must ask you to be direct. Do you think it is fair to give eight per cent return on an electrical property and a seven per cent return on a natural gas property?"

Answer. "I think I have answered that."

Question. "I will put that again. Do you think that an electrical property should receive eight per cent and a natural gas property seven per cent?"

Answer. "No. Circumstances make them the same."

Question. "Should they have seven or eight per cent?"

Answer. "You can't answer that in one statement, Mr. Smith. I would have to state what is my opinion on the proper rate in each new instance."

Question. "Should a natural gas property have something higher than the usual return for interest on its investment, something higher than interest on the investment, by way of profit on
364 account of the hazard of the business?"

Answer. "That again depends on circumstances. If the life of the field is short, of course they should retire against the loss of the field."

"If the gas property cost a million dollars more to construct than the \$5,155,000.00 I have carried in my figures then my figures would be in error to the extent of one million dollars. I haven't undertaken to ascertain the present reproduction cost of the property or the present fair value of the property for the purpose of calculating its fair rate of return. I have shown in my statement \$892,000.00 in additions to the plant, not showing the additions for the year 1921. In my statement I did not provide for those additions out of earnings.

Question. "Then you assume, to get your results, that the company could use all those earnings, that you set up as net earnings, to pay the depreciation account and return interest?"

Answer. "Yes."

Answer. "And you have assumed that the company has gotten on the outside \$889,000.00 in money to put into the property?"

Answer. "Yes."

"My statement is constructed on the theory that a company should receive a return on the capital investment as shown by the capital account, less an annual straight-line depreciation, so that each year you receive a return on a less capital than you did the preceding year, unless you have added to capital by way of additions."

Question. "Suppose you have a period of four or five years of an advance in labor and material costs—I will put the advance at thirty-three and a third per cent to correspond to your advance in material and labor costs, and the purchasing power of a dollar is to the same extent less; do you not think, in order to equalize your returns with the depreciated purchasing power of the dollar that you should receive your return on the appreciated value of your property?"

Answer. "I don't think that is a sound theory, no. That goes into a matter that I would like to discuss with you. I have
365 made my depreciation on the compressing plant on the assumption that they have been operated as ordinarily; forty per cent operation of the engines and pumps would not be unusual."

Question. "Isn't there any such thing as keeping up your ma-

achinery by renewals and replacements of parts, the cost being charged to different expenses as you go along, where there is no obsoleteness?"

Answer. "Yes, there is such a thing."

Question. "Isn't that done in your electrical machinery very largely?"

Answer. "No, I don't hardly think so."

Question. "Don't you keep your machinery from year to year one hundred per cent?"

Answer. "Sometimes we get them to one hundred per cent condition and sometimes we have to scrap them. I am not sure as to whether the Pine Bluff Company began in the Summer and Spring of 1920 the erection of tanks and reservoirs for oil in the town of Pine Bluff before the gas company filed its schedule for increased rates.

J. A. Whitlow Exhibit No. 1, consisting of pages 1 and 2, is as follows:

Arkansas Natural Gas Company.

Plant Investment, December 31st, 1912.....
 Working Capital.....
 Going Value at Start.....

\$5,155,070.15
 Salvage, \$650,000.00
 250,000.00
 600,000.00

\$6,005,070.16

Year.	Fair value January 1.	Depreciable property.	Depreciation 4%.	Net earnings.	Net, loss depr.	Rate of returns.	Rate of returns.	Additions during year.
1913	6,005,070	4,505,070	180,203	506,855	326,652	5.45%	109,564	
1914	5,934,431	4,434,431	177,377	488,651	311,274	5.25%	124,789	
1915	5,881,843	4,381,843	175,274	325,489	140,215	2.39%	56,273	
1916	5,762,842	4,262,842	170,573	418,926	248,413	4.32%	68,355	
1917	5,660,684	4,120,884	166,427	614,317	447,890	7.92%	106,814	
1918	5,601,071	4,101,071	164,043	707,208	543,165	9.72%	129,749	
1919	5,566,777	4,066,777	162,671	524,048	361,377	6.50%	152,681	
1920	5,556,787	4,056,787	162,271	445,880	583,690	10.52%	143,822	
1921	5,538,338	4,038,338	161,534	585,000	423,466	7.67%	.....
Average 9 Years.	<u>5,723,094</u>	.....	.....	.....	<u>376,229</u>	<u>6.57%</u>		
Average Last 4 Year	5,565,743	.....	.....	.....	477,904	8. 6%		

EXHIBIT NO. 1 TO WHITLOW.

Arkansas Natural Gas Company.

Early Losses Considered as Going Value.

	Plant Investment, December 31, 1921.....	Working Capital.....	\$5,155,070 350,000	Salvage, \$450,000
				\$5,405,000

Year.	Fair value January 1.	Depre- ciable property.	Deprecia- tion 4%.	Net earnings.	Fair return.		Additions during year.
					Rate.	Amount.	
1913	5,405,070	4,505,070	180,203	506,855	326,652	7%	378,355
1914	5,386,134	4,486,134	179,445	448,651	309,296	7%	377,029
1915	5,390,301	4,499,301	179,972	325,489	145,517	7%	377,951
1916	5,088,008	4,798,008	191,969	418,926	226,966	7%	398,160
1917	5,927,557	5,038,557	201,542	634,317	412,775	7%	414,929
1918	5,834,983	4,945,984	197,939	707,298	509,269	8%	466,799
1919	5,766,893	4,877,894	195,116	524,048	328,932	8%	461,251
1920	5,724,458	4,835,459	193,418	745,880	552,462	8%	457,957
1921	5,674,862	4,785,863	191,425	585,000	393,545	8%	453,980
Average 1918-1921	5,600,299	.....	.....	.....	.....	455,582	....
Rate of Return 1918-1921							7.90%

368 Approved as a correct statement of the evidence.

(Signed)

JACOB TRIEBER,

Judge.

369 UNITED STATES OF AMERICA,
Eastern District of Arkansas,
Western Division:

Be it remembered, that at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the third day of April, Anno Domini, One Thousand, Nine Hundred and Twenty-two at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Triebel Judge presiding and holding said Court, the following proceedings were had, towit, on July 1st, 1922.

370 In the United States District Court for the Western Division of the Eastern District of Arkansas.

In Equity.

ARKANSAS NATURAL GAS COMPANY, Complainant,

v.

ARKANSAS RAILROAD COMMISSION et al., Defendants.

Order Allowing Appeal.

On motion of W. B. Smith, Esquire, solicitor and counsel for complainant, it is hereby ordered that an appeal to the Supreme Court of the United States from the order and decree heretofore filed and entered herein be and the same is hereby allowed, returnable in 30 days, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of Five Hundred (\$500.00) Dollars.

(Signed)

JACOB TRIEBER,

District Judge.

371 Filed Jul. 1, 1922. Sid B. Redding, Clerk, by — —
D. C.

In the United States District Court for the Western Division of the
Eastern District of Arkansas.

In Equity.

No. 2062.

ARKANSAS NATURAL GAS COMPANY, Complainant,
vs.

ARKANSAS RAILROAD COMMISSION, CITY OF PINE BLUFF, Town
of Sheridan, Town of Alexander, City of Benton, Town of Haskell,
City of Malvern, City of Arkadelphia, Town of Gurdon, City of
Prescott, Town of Emmett, City of Hope, Town of Garland,
Town of Fouke, Town of Traskwood, Little Rock Gas & Fuel
Company, and Consumers' Gas Company, Defendants.

Assignment of Errors.

Now comes the complainant in the above entitled cause and files
the following assignment of errors upon which it will rely upon its
prosecution of an appeal in the above entitled cause from the inter-
locutory order and decree made by Circuit Judge Kimbrough Stone
and District Judges John H. Pollock and Jacob Trieber, and entered
of record in this Honorable Court on the 6th day of June, 1922:

1. That Circuit Judge Kimbrough Stone and District Judge John
H. Pollock sitting with District Judge Jacob Trieber, the presiding
Judge of the United States District Court for the Western Division
of the Eastern District of Arkansas, upon complainant's application
for an interlocutory injunction in said cause, erred in not restraining
and enjoining the defendant Arkansas Railroad Commission and the
defendant Little Rock Gas & Fuel Company from interfering with
complainant in the establishment of city border rates for gas sup-
plied to the defendant Little Rock Gas & Fuel Company for distri-
bution by the said Little Rock Gas & Fuel Company to its consumers
in the City of Little Rock and vicinity, and in entering an
interlocutory order and decree refusing the application for
temporary injunction against the said Little Rock Gas &
Fuel Company.

2. That Circuit Judge Kimbrough Stone and District Judge John
H. Pollock sitting with Judge Jacob Trieber, the presiding judge
of the United States District Court for the Western Division of the
Eastern District of Arkansas, upon complainant's application for an
interlocutory injunction in said cause, erred in not restraining and
enjoining the defendant Arkansas Railroad Commission and the
defendant Consumers' Gas Company from interfering with complain-

the establishment of city border rates for gas supplied to the Little Consumers' Gas Company for distribution by the said defendants' Gas Company to its consumers in the City of Hot Springs is equity, and in entering an interlocutory order and decree regarding the application for temporary injunction against the said Consumers' Gas Company.

The interlocutory order and decree should have also been granted against, and the Judges sitting on said application erred in granting it against, the defendants Little Rock Gas & Fuel Company and Consumers' Gas Company and each of them, restraining them and each of them from maintaining in force as a settlement between complainant and each of said companies the contracts between each of said companies and complainant providing for payment to complainant of the per cent named in the respective contracts of the gross amounts collected from its consumers by each of said companies, and in not authorizing complainant to establish city border rates to be paid by each of said companies for gas delivered by complainant to them respectively as distributing companies for sale and distribution by them to their consumers in the respective cities served by each of them.

That it was error to deny the injunction as to the Little Rock Gas & Fuel Company and the Consumers' Gas Company upon the ground that the contract of complainant with each of said companies related to the sale of natural gas in interstate commerce, and that the fixing of the rates to be paid by each of said companies for natural gas delivered by complainant to each of them for distribution by them to their respective consumers was not a reason within the jurisdiction of the defendant Arkansas Railroad Commission.

That it was error to deny the injunction as to the Little Rock Gas & Fuel Company and the Consumers' Gas Company upon the ground that complainant in transporting natural gas from the gas fields in Louisiana and delivering the same to the Little Rock Gas & Fuel Company and the Consumers' Gas Company at the city borders of Little Rock and Hot Springs, respectively, for distribution by each of said companies to the respective consumers of each, is engaged in interstate commerce of a national character, and not with respect to subject to regulation by the Arkansas Railroad Commission.

That it was error to deny the injunction as to the Little Rock Gas & Fuel Company and the Consumers' Gas Company upon the ground that the special act of the Legislature of Arkansas, No. 443, passed March 25, 1921, was constitutional in its entirety, and that the Arkansas Railroad Commission had no jurisdiction to establish city border rates for gas delivered to distributing companies because of the provision of said Special Act No. 443 providing "that the Arkansas Railroad Commission shall have no jurisdiction or power to modify or impair any existing contracts for supplying gas to persons, corporations, municipalities or distributing companies."

7. That it was error to deny the injunction as to the Little Rock Gas & Fuel Company and the Consumers' Gas Company upon the ground that the Arkansas Railroad Commission had no power to establish city border rates under the provisions of
374 Act. No. 124 of the Legislature of Arkansas establishing the Arkansas Railroad Commission, approved February 15, 1921, as that Act conferred upon the Arkansas Railroad Commission the full exercise of the police power of the State of Arkansas in the matter of regulating rates and service of all public utility companies, which included the making of rates to be charged to or price to be paid by distributing companies for natural gas delivered to them for distribution to their consumers in communities served by such distributing companies.

8. It was error to deny the injunction as to the distributing companies, the defendants Little Rock Gas & Fuel Company and the Consumers' Gas Company, because the effect of complainant's continuing to supply natural gas to said distributing companies and to each of them under the percentage contracts, whereby complainant is required to stand all the loss occasioned by leakage and for unaccounted gas within the plants and systems of said distributing companies, imposes such burden upon complainant as to confiscate and destroy its property and thereby destroying its ability to render service to its patrons and the public in several towns and communities served by it direct.

Wherefore, the Arkansas Natural Gas Company, complainant and appellant, prays that said interlocutory order and decree be reversed and that said District Court for the Western Division of the Eastern District of Arkansas be ordered to enter an interlocutory order and decree extending the injunction as entered to the defendants Little Rock Gas & Fuel Company and Consumers' Gas Company; that the Arkansas Railroad Commission be also restrained from taking any action to prevent or interfere with or entertain any complaint against the establishment by complainant and appellant of city border
375 rates for the cities of Little Rock and Hot Springs; or that said judges, or such judges as may be called to sit with the District Judge for the Western Division of the Eastern District of Arkansas, under the provisions of Section 226 of the Code, be ordered to make and have entered an interlocutory order and decree as herein prayed for.

(Signed)

(Signed)

MOORE, SMITH, MOORE &
TRIEBER,
W. B. SMITH,
Attorneys for Appellant.

376 Filed Jul. 1, 1922. Sid B. Redding, Clerk.

In the United States District Court for the Western Division of the Eastern District of Arkansas.

In Equity.

ARKANSAS NATURAL GAS COMPANY, Complainant,
v.

ARKANSAS RAILROAD COMMISSION et al., Defendants.

To the Honorable Jacob Trieber, District Judge:

The above named complainant, feeling aggrieved by the interlocutory order and decree rendered and entered in the above entitled cause on the 6th day of June, A. D. 1922, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herein, and it prays that its appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said order and decree was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of such court in such cases made and provided.

And your petitioner further prays that proper order relating to the required security required of it be made.

(Signed) MOORE, SMITH, MOORE &
TRIEBER,
(Signed) W. B. SMITH,
Solicitors for Complainant.

377 UNITED STATES OF AMERICA,
Eastern District of Arkansas,
Western Division:

Be it remembered, That at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the third day of April Anno Domini, One Thousand, Nine Hundred and Twenty-two at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber Judge presiding and holding said Court, the following proceedings were had, to-wit, on July 1st, 1922:

No. 2062.

ARKANSAS NATURAL GAS COMPANY
vs.

ARKANSAS RAILROAD COMMISSION et al.

Comes the plaintiff by Moore, Smith, Moore & Trieber, Esqs., its attorneys, and presents to the Court its bond in the sum of Five Hun-

dred Dollars, with the Southern Surety Company, as surety, which bond is examined and approved by the Judge of this Court as sufficient. And said plaintiff also files its Citation with service of the same duly accepted by the attorneys for the defendants herein.

378 Filed Jul. 1, 1922. Sid B. Redding, Clerk.

In the United States District Court for the Western Division of the Eastern District of Arkansas.

In Equity.

ARKANSAS NATURAL GAS COMPANY, Complainant,

v.

ARKANSAS RAILROAD COMMISSION et al., Defendants.

Bond.

Know all men by these presents:

That we, Arkansas Natural Gas Company, as principal, and Southern Surety Company as surety, are held and firmly bound unto the Arkansas Railroad Commission, City of Pine Bluff, Town of Sheridan, Town of Alexander, City of Benton, Town of Haskell, City of Malvern, City of Arkadelphia, Town of Gurdon, City of Prescott, Town of Emmett, City of Hope, Town of Garland, Town of Fouke, Town of Traswood, Little Rock Gas & Fuel Company and Consumers Gas Company, appellees in the above cause, in the sum of Five Hundred (\$500.00) Dollars lawful money of the United States, to be paid to them and their respective executors, administrators and successors; to which payment well and truly to be made we bind ourselves and each of us jointly and severally and each of our successors by these presents.

Sealed with our seals and dated this 1st day of July, 1922.

Whereas, the above named Arkansas Natural Gas Company has prosecuted an appeal to the Supreme Court of the United States to reverse the interlocutory order and decree of the District Court of the United States for the Western Division of the Eastern District of Arkansas made and entered by Kimbrough Stone, United States Circuit Judge, and John H. Pollock, United States District Judge, and Jacob Trieber, United States District Judge, in the above entitled cause:

379 Now, therefore, the condition of this obligation is such that if the above named Arkansas Natural Gas Company will prosecute its said appeal to effect and answer all costs if it fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

ARKANSAS NATURAL GAS COMPANY,

(Signed) By W. B. SMITH,

*Atty.,
Principal.*

[Seal of Southern Surety Company.]

SOUTHERN SURETY COMPANY,
Surety,

(Signed) By J. S. MALONEY,
Attorney in Fact.

Approved.

(Signed) JACOB TRIEBER,
Judge.

380 Filed Jul. 1, 1922. Sid B. Redding, Clerk.

In the United States District Court for the Western Division of the Eastern District of Arkansas.

In Equity.

No. 2062.

ARKANSAS NATURAL GAS COMPANY, Complainant,

v.

ARKANSAS RAILROAD COMMISSION et al., Defendants.

Præcipe for Transcript.

To the District Clerk of said Court:

You are hereby directed in the preparation of transcript on complainant's appeal to the Supreme Court of the United States from the interlocutory order and decree entered herein on June 6, 1922, to incorporate the following proceedings, documents and portions of the record, namely:

1. Bill of complaint and all exhibits thereto.
2. Response of Arkansas Railroad Commission.
3. Answer of Arkansas Railroad Commission.
4. Response of Little Rock Gas & Fuel Company.
5. Answer of Little Rock Gas & Fuel Company and the exhibit thereto.

6. Response of Consumers' Gas Company.

7. Condensed narrative statement of the evidence taken at the hearing on the application for a temporary injunction and all exhibits attached thereto.

8. All court orders, including order granting appeal.

9. Copy of bond.

10. Copy of prayer for appeal.

11. Copy of assignment of errors.

12. Copy of citation.

(Signed)

MOORE, SMITH, MOORE &
TRIEBER,
W. B. SMITH,
Solicitors for Complainant.

We acknowledge service this June 24th 1922.

LITTLE ROCK GAS & FUEL CO.,
By COCKRILL & ARMISTEAD,

Atty's.

CONSUMERS GAS COMPANY,
By MARTIN, WOOTTON & MARTIN,

Atty's.

J. S. UTLEY,

*Attorney General of State of Arkansas,
for Other Defendants.*

381 In the United States District Court for the Western Division
of the Eastern District of Arkansas.

In Equity.

ARKANSAS NATURAL GAS COMPANY, Complainant,

v.

ARKANSAS RAILROAD COMMISSION et al., Defendants.

Certificate of Clerk.

I, Sid B. Redding, Clerk of the District Court of the United States for the Eastern District of Arkansas, do hereby certify that the opinion of court mentioned in the foregoing order has not been filed in my office.

Witness my hand and seal this 22nd day of July, A. D. 1922.

SID B. REDDING,

*Clerk of the District Court of the
United States for the Eastern
District of Arkansas.*

382 Filed Jul. 1, 1922. Sid B. Redding, Clerk,
by — — —, D. C.

In the United States District Court for the Western Division of the
Eastern District of Arkansas.

In Equity.

ARKANSAS NATURAL GAS COMPANY, Complainant,

v.

ARKANSAS RAILROAD COMMISSION et al., Defendants.

UNITED STATES OF AMERICA, ss:

To Arkansas Railroad Commission, City of Pine Bluff, Town of Sheridan, Town of Alexander, City of Benton, Town of Haskell, City of Malvern, City of Arkadelphia, Town of Gurdon, City of Prescott, Town of Emmett, City of Hope, Town of Garland, Town of Fouke, Town of Traskwood, Little Rock Gas & Fuel Company, and Consumers Gas Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington in the District of Columbia, on the 31st day of July, A. D. 1922, pursuant to an order allowing an appeal filed and entered in the Clerk's office of the District Court of the United States for the Western Division of the Eastern District of Arkansas, from an interlocutory order and decree signed, filed and entered on the 6th day of June, 1922, in that certain suit, being in Equity, numbered 2062, wherein the Arkansas Natural Gas Company is complainant and appellant and you are defendants and appellees, to show cause, if any there be, why the order and decree rendered against said appellant, as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

Witness the Honorable Jacob Trieber, United States District Judge for the Western Division of the Eastern District of Arkansas, this 1st day of July, 1922.

JACOB TRIEBER,

*United States District Judge for the
Eastern District of Arkansas.*

We acknowledge service this July 1, 1922.

LITTLE ROCK GAS & FUEL CO.,
By COCKRILL & ARMISTEAD, Atty's.

CONSUMERS GAS COMPANY.
By MARTIN, WOOTTEN & MARTIN, Atty's.

J. S. UTLEY,

*Attorney General of the State of State of Arkansas,
For Other Defendants.*

383 UNITED STATES OF AMERICA,
Eastern District of Arkansas,
Western Division:

I, Sid B. Redding, Clerk of the District Court of the United States for the Eastern District of Arkansas, in the Eighth Circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct and compared copies of the original remaining of record in my office, at Little Rock, Arkansas, of the Assignment of Errors, Statement of Testimony, record, pleadings and all proceedings in the case of Arkansas Natural Gas Company, complainant, against Arkansas Railroad Commission, City of Pine Bluff, Town of Sheridan, Town of Alexander, City of Benton, Town of Haskell, City of Malvern, City of Arkadelphia, Town of Gurdon, City of Prescott, Town of Emmett, City of Hope, Town of Garland, Town of Fouke, Town of Traskwood, Little Rock Gas & Fuel Company, and Consumers' Gas Company, defendants.

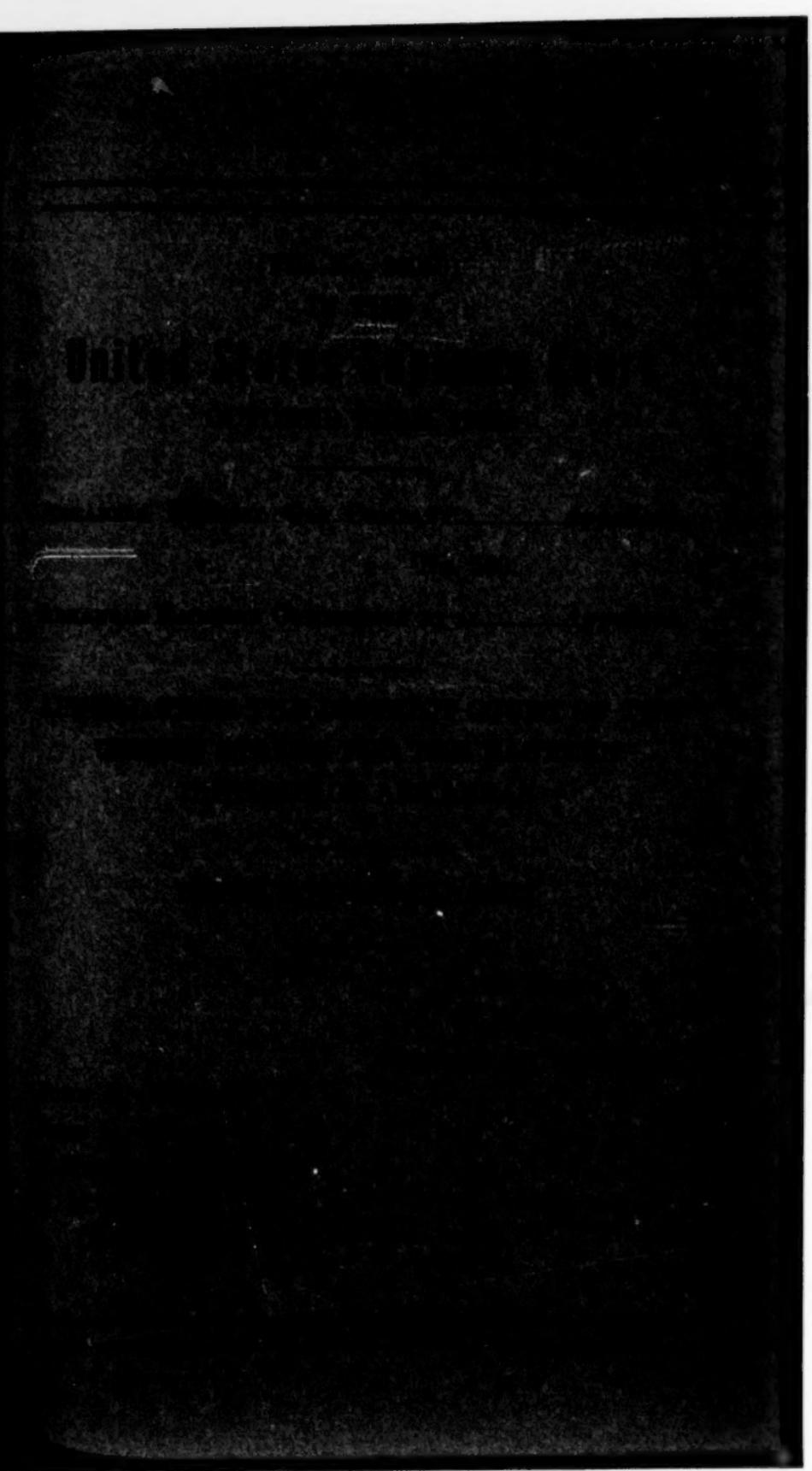
In witness whereof, I have hereunto set my hand and the seal of said Court, this 21st day of July in the year of our Lord, One Thousand Nine Hundred and Twenty-two and of the Independence of the United States of America, the One Hundred and Forty-seventh.

Attest:

SID B. REDDING,
Clerk.

Endorsed on cover: File No. 29,050. E. Arkansas D. C. U. S. Term No. 500. Arkansas Natural Gas Company, appellant, vs. Arkansas Railroad Commission, City of Pine Bluff, Town of Sheridan, et al. Filed July 25th, 1922. File No. 29,050.

(7075)



INDEX

	Page
Statement of the Case	1
Order	12
Assignment of Error.....	13
Argument	17
General Statement of Points.....	17
The Courts under the Arkansas Constitution cannot exercise Legislative Power.....	19
Bacon v. Rutland R. R. Co., 232 U. S. 137.....	23
Clear Creek Oil Co. v. Fort Smith Smelter Co., 148 Ark. 264.....	24
Detroit & Mackinac R. R. Co. v. Michigan Railroad Com- mission, 235 U. S. 402.....	23
Helena Water Co. v. City of Helena, 277 Fed. 66.....	22
Prentiss v. Atlantic Coast Line, 211 U. S. 210, 288.....	23
St. Louis Southwestern Ry. Co. v. Commissions, 265 Fed. 524.....	23
St. Louis Southwestern Ry. Co. v. Stewart, 150 Ark. 586.....	27
Van Buren Water Works v. City of Van Buren.....	26
The Arkansas Railroad Commission has full and complete juris- diction to establish City Gate Rates for gas supplied to distributing companies.....	30
Camden v. Arkansas Light & Power Co., 145 Ark. 208.....	32
Clear Creek Oil & Gas Co. v. Fort Smith Smelter Co., 148 Ark. 260.....	32
Harrison Electric Co. v. Citizens Ice & Storage Co. 149 Ark. 502.....	32
Louisville & Nashville R. R. Co. v. Motley, 219 U. S. 482.....	34
State Belt Elec. St. Ry. v. Public Service Commission, 78 Pa. Sup. 493.....	34

INDEX—Continued

	Page
Town of Pocahontas v. Central Light & Power Co., 152 Ark. 276.....	37
Union Dry Goods Co. v. Georgia Public Service Cor- poration, 248 U. S. 372.....	31
Act 443 Unconstitutional and void in the provision prohibiting the Railroad Commission from modifying or impairing ex- isting contracts for supplying gas to distributing com- panies, etc.....	50
Cotham v. Coffman, 111 Ark. 108.....	52
Cotting v. Kansas City Stock Yards Co., 183 U. S. 109.....	51
Davis v. Gaines, 48 Ark. 370.....	52
Paine v. State, 124 Ark. 20.....	52
Railway Co. v. Worthm, 46 Ark. 312.....	51
State v. Marsh, 37 Ark. 356.....	52
State v. DeSchamp, 53 Ark. 490.....	52
Wells Fargo Express Co. v. Crawford County, 63 Ark. 576..	52
Regulation of rates for sale of gas by administrative bodies does not impose a direct burden on interstate commerce, whether the gas is sold to distributing companies or to individual consumers at the burner tips. It is a sub- ject of commerce that does not require a general system or uniformity of regulaiton so as to vest the power ex- clusively in Congress.....	56
In Re Pa. Gas Co., 122 N. E. 262.....	65
Pa. Gas Co. v. Public Service Commission, 252 U S. 23....	65
The Public Duties to be Regulated are fulfilled in one state only	71
The Transportation of Gas from Louisiana by a Public Utility Company for sale to distributing companies in Arkansas and to consumers through its own distributing systems in Arkansas is not commerce of a national character.....	71
Adams Express Co. v. Iowa, 196 U. S. 144.....	87

INDEX—Continued

	<i>Page</i>
Central Trust Co. v. Consumers Light & Power Co., 282 Fed. 680	90
County of Mobile v. Kimball, 102 U. S. 702.....	80
Minnesota Rate Case, 230 U. S. 399.....	71-74
Haskell v. Kansas Natural Gas Co., 234 U. S. 217.....	87-88
Oklahoma v. Kansas Natural Gas Co., 221 U. S. 229....	87-88
Port Richmond Ferry v. Hudson Co., 234 U. S. 332.....	75
Public Utilities Commission v. Landon, 249 U. S. 236....	82-84
State v. Kansas Natural Gas Co., 208 Pac. 622.....	92
State of Missouri v. Kansas Natural Gas Co., 282 Fed. 341	91
Transportation Co. v. Parkersburg, 107 U. S. 702.....	75
Wilmington Transp. Co. v. Cal. R. R. Commission, 236 U. S. 154.....	75
Wabash Ry. Co. v. Illinois, 118 U. S. 577.....	79

(File No. 29050)

IN THE

United States Supreme Court

OCTOBER TERM, 1922.

ARKANSAS NATURAL GAS COMPANY.....*Appellant,*

v. No. 500.

ARKANSAS RAILROAD COMMISSION ET AL.....*Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE EASTERN
DISTRICT OF ARKANSAS

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

This appeal is from an interlocutory order on a hearing in the District Court, before three judges, for a temporary injunction under the provisions of section 266 of the Judicial Code, in an action brought

by appellant to enjoin the Arkansas Railroad Commission, one of the appellees, and the cities and towns made parties to said action, from maintaining in force and effect confiscatory rates in the several cities and towns in the State of Arkansas where appellant distributes natural gas direct to its consumers; and to enjoin the said Railroad Commission from maintaining in force and effect, under an unconstitutional State statute, the confiscatory divisional contract rates prescribed in contracts between appellant and appellees, Little Rock Gas & Fuel Company and Consumers Gas Company, for gas supplied by appellant to said companies, which companies are engaged in distributing natural gas to their respective patrons in the cities of Little Rock and Hot Springs, Arkansas; also to enjoin the Railroad Commission and said distributing companies from interfering with appellant's putting into effect city or town border rates applicable to said distributing companies.

The Commission denied appellant's application for establishment of city border rates applicable to distributing companies upon the ground that it was prohibited by a special act of the Legislature of Arkansas, being Act No. 443, approved March 25, 1921, enacted after appellant had made its application for an increase of rates, from making rates for appellant that would modify or impair existing contracts between appellant and said distributing companies. Appellant contends that said provision of said special act is unconstitutional and void in that the prohibition

in said act against impairing or modifying existing contracts between appellant and the distributing companies was not made applicable to any other utility in Arkansas engaged in the natural gas or other public utility business, and, as to appellant, is discriminatory and void as denying it the equal protection of the laws and as taking its property for public use without just compensation.

On December 31, 1920, the revenues derived from appellant's public utility business being wholly inadequate and insufficient to give it a reasonable return on the fair value of its property devoted to the public use, appellant made application to the Arkansas Corporation Commission, the body then authorized under the statutes of the State of Arkansas to make rates for public utility companies, for an increase of its rates and for the establishment of city border rates for gas supplied by appellant to the distributing companies engaged in the distribution of natural gas in the cities of Little Rock and Hot Springs in the State of Arkansas, being the appellees Little Rock Gas & Fuel Company and the Consumers Gas Company.

Under legislation of the State of Arkansas, enacted subsequent to the filing of appellant's new schedule of rates and application for an increase of rates, jurisdiction to make and establish rates for appellant on its said application was transferred to the Arkansas Railroad Commission, which Commission denied ap-

pellant's application for an increase of rates and for the establishment of city border rates applicable to distributing companies taking gas from it. Under the laws of Arkansas the decision of the Railroad Commission was the final legislative act in the rate-making process.

After the decision of the Railroad Commission had been rendered appellant filed its bill of complaint in the District Court for the Western Division of the Eastern District of Arkansas, to enjoin the continuance in force of the old rates as being confiscatory, and to enjoin the Railroad Commission and said distributing companies from interfering with it in the establishment of city border rates for all gas delivered by appellant to said distributing companies at the city borders of the cities of Little Rock and Hot Springs. Appellant made application for temporary injunction to the District Court before three judges; the hearing on appellant's application was had on March 6 and 7, and the final order of the three judges was entered on June 6, 1922.

The three judges before whom the application for a temporary injunction was heard, in an order made and entered by them on June 6, 1922, enjoined appellee, Arkansas Railroad Commission and the other appellees, other than the Little Rock Gas & Fuel Company and the Consumers Gas Company, from enforcing rates for gas furnished by appellant then in effect and from interfering with appellant in its right

to establish other, higher and different rates for gas supplied to its patrons in the several municipalities, incorporated and unincorporated, in which appellant operates distributing systems; but denied the application of appellant for a temporary injunction against the appellees, Little Rock Gas & Fuel Company and the Consumers Gas Company, and the Arkansas Railroad Commission with respect to gas supplied by appellant to the said distributing companies, and declined to enjoin said appellees from interfering with appellant in the establishment of city border rates for gas obtained by said distributing companies from appellant for distribution by them in the cities of Little Rock and Hot Springs.

Appellant did not comply with the terms of said order authorizing it to put into effect other and higher rates for gas supplied to consumers in distribution plants owned by appellant, since said order only afforded partial relief from the confiscatory rates, but took an appeal under the provisions of section 266 of the Judicial Code from the entire order to this court.

Appellant produces and purchases natural gas in the State of Louisiana, which it transports through main pipelines from the State of Louisiana into the State of Arkansas and distributes through distributing mains, forming part of its system, to its customers at the burner-tips in twenty-five municipalities and unincorporated towns in the State of Arkansas. It also sells gas to the appellees, Little Rock Gas & Fuel

Company, of Little Rock, Arkansas, and the Consumers' Gas Company, of Hot Springs, Arkansas, which is transported through said main pipe line from the fields in Louisiana, which pipe line connects with the distribution lines of each of said companies at or near the city borders of the cities of Little Rock and Hot Springs, respectively. It sells gas to said distributing companies under divisional or percentage contracts entered into in the years of 1910 and 1911, whereby it receives 66 2-3 per cent of the amounts collected from gross sales by each of said companies for gas sold by them to domestic consumers, and 75 per cent of the amounts collected by each of said companies for gas sold to industrial users.

Appellant's system consists of gas leases, gas wells, collecting pipe lines, two compressing stations in the State of Louisiana, as well as gas reserve leases in the States of Louisiana, Arkansas and Texas, and a main trunk line from the gas fields in Louisiana to Little Rock, the northern terminus, branch lines to Hot Springs and Pine Bluff, and distributing plants connecting with the main line and the Pine Bluff branch line. The Little Rock Gas & Fuel Company and the Consumers' Gas Company own and operate the distributing plants in Little Rock and Hot Springs, respectively, and buy all their gas from appellant. All of appellant's property both in the State of Louisiana and State of Arkansas is used for conducting appellant's business in the State of Arkansas. Prior to the 24th day of January, 1921, appellant operated its local

distributing plants in the several municipalities served by it in the State of Arkansas under franchises granted by the municipal councils of said municipalities. On the 24th day of January, 1921, appellant was granted an Indeterminate Permit by the Corporation Commission of the State of Arkansas under the provision of act 571 of the Acts of the General Assembly of Arkansas for the year 1919, the body which had the power and authority to grant such permit, and since said date it has operated its said natural gas plants in said municipalities and in the unincorporated towns served by it, and has conducted all of its business in Arkansas under said Indeterminate Permit, subject to all the terms, conditions and limitations applying to said Indeterminate Permit, as provided in said Act No. 571.

The main line of appellant's pipe line system was connected with the distributing system of the Little Rock Gas & Fuel Company in the city of Little Rock in the early part of July, 1911, and shortly thereafter appellants's main pipe line system was connected with the distributing system of the appellee, Consumers' Gas Company, in the city of Hot Springs, and about that time, appellant began to serve consumers through its own distributing system in the city of Pine Bluff, the gas for each of the places being conducted through the same main line. The construction by appellant of distributing plants in the several cities and towns from which appellant had obtained franchises, continued throughout the remainder of the year

1911 to the year 1912, and construction was not fully completed until the latter part of the year 1912.

During the year 1920, appellant was confronted with a condition, which now confronts it, wherein it was drawing large supplies of gas from a rapidly diminishing source of supply and selling it for industrial and domestic uses at prices that did not yield it a fair return on the value of its properties used and useful in the public service, and did not yield it any sum to provide for the amortization of its investment or for the extension of its lines and the development of additional sources of supply so as to enable it to maintain the integrity of its plant and the continuity of its service. It had operated its plant for a period of ten years at a loss, and would be compelled to go out of business and lose its entire investment other than a small salvage value not exceeding five or six hundred thousand dollars unless it was afforded a revenue sufficient to enable it to continue development operations and make extensions.

Appellant was also confronted with a condition, which now confronts it, in the cities of Little Rock and Hot Springs that not only results in a very large loss of revenue to appellant but also encourages wasteful methods by the distributing companies operating in said cities in the conduct of their business. Under the contracts between appellant and the said distributing companies appellant's compensation for gas sold to said companies for distribution by them to

their patrons and consumers was based on the percentages named in said contracts of the gross collections made by said distributing companies on the meter readings of the domestic and industrial users of said distributing companies.

Under the contracts with the distributing companies there is no incentive resting upon the distributing companies to keep their plants and systems in good condition of repair, since the loss by leakage is the loss of appellant. The unaccounted for gas, including gas lost through leakage in the distributing lines of the Little Rock plant, for the year 1920, amounted to 732,397,000 cubic feet, or an actual loss per mile of equivalent three inch main of approximately 3,000,000 cubic feet, or fifteen times good practice, which is not exceeding two hundred thousand cubic feet per mile of equivalent three inch main. The unaccounted for gas in the Little Rock plant, for the year 1921, amounted to 834,209,000 cubic feet, or an actual loss per mile of equivalent three inch main of 3,580,000 cubic feet, or seventeen times good practice. At Hot Springs the loss of unaccounted for gas, for the year 1920, amounted to 114,646,000 cubic feet, and in 1921 to 158,816,000 cubic feet.

Appellant applied to the Corporation Commission of the State of Arkansas on December 31, 1920, for a revision of its rates. Appellant, on said date, filed with it a schedule of rates and classification of service to be effective on the dates therein shown,

wherein the appellant increased the rate for gas sold domestic consumers to sixty-five cents flat per M cubic feet and provided for a city border rate of forty-five cents to be paid by distributing companies obtaining gas from it at the city gates.

The Corporation Commission was vested with the authority in the making of rates to disregard contracts between the utility applying for the rates and any municipality or individual or other corporation, and in the exercise of the police power vested in it was authorized to make and put into effect rates that would give a fair and reasonable return, considering the hazards of the business, upon the fair value of the property of the utility devoted to the public service. Pending this application the State Corporation Commission was abolished and some of its powers transferred to the State Railroad Commission.

The Railroad Commission, on September 3, 1921, made and entered an order denying appellant's application for classification of service and increase of rates and declined to enter an order establishing city border rates, for the cities of Little Rock and Hot Springs, upon the ground that no legislative power had been delegated to it to modify, change or impair existing contracts, between appellant and the appellees, Little Rock Gas & Fuel Company, and Consumers' Gas Company.

Thereafter, appellant perfected, in accordance with the State statute, its appeal to the State Circuit

Court. Before hearing, this appeal was dismissed by the application of the appellant on January 31, 1922. This bill was filed February 18, 1922. The effect of denial of appellant's application by the Railroad Commission was to continue in force the old schedule of rates, which the bill filed by appellant attacked as confiscatory. Said bill also sought the substitution of city gate rates for the divisional percentage arrangement then in force in Little Rock and Hot Springs (R. 1-35).

The Arkansas Railroad Commission and the two distributing companies filed separate answers to appellant's bill, in which each denied the pertinent facts alleged by appellant with respect to the confiscatory character of the old schedule of rates which the Railroad Commission declined to disturb or change. They also raised the issues following: (1) The jurisdiction of the District Court, as a Federal Court, because the legislative rate-making process had not been completed and the rate become final; (2) the validity and binding force of the divisional contracts, and that the State could not, in the exercise of its police power, alter, change, modify or impair the obligation of said contracts (R. 72-97).

Appellant in its bill attacked the constitutionality of the provision of Special Act 443 of the Arkansas Legislature of 1921, approved March 25, 1921, as being discriminatory and void and in violation of the right guaranteed to appellant under the Fourteenth

Amendment to the Constitution of the United States, in excluding from the jurisdiction of the Arkansas Railroad Commission, as to appellant only, the right to modify or impair any existing contract for supplying gas to persons, firms, corporations, municipalities or distributing companies (R. 26). Appellees in their answers contend that said act is constitutional in its entirety.

ORDER.

The order made by the Honorable Kimbrough Stone, United States Circuit Judge, the Honorable Jacob Trieber, United States District Judge, and the Honorable John C. Pollock, United States District Judge, recited:

"The application for temporary injunction having been heard at the present term of court by the undersigned judges, and having been submitted and being now sufficiently advised and reserving the filing of opinion hereafter, it is ordered, adjudged and decreed that all of said defendants (except the Little Rock Gas & Fuel Company and the Consumers' Gas Company) their agents and attorneys, successors and assigns, and all other persons acting by, through or under any of said defendants be and are hereby enjoined from in anywise enforcing each, all and every one of the rates for gas furnished by complainant in effect now, and from interfering with complainant in its right to establish other, higher and different rates for gas supplied to its patrons in the several municipalities, incorporated and unincorporated. * * *"

The order after providing the conditions upon which the temporary injunction should take effect concluded as follows:

"And the application for the temporary injunction against the defendants, the Little Rock Gas & Fuel Company and the Consumers' Gas Company, is denied, reasons for which will be stated in the opinion of the court when filed" (R 99-100).

The clerk of said District Court has certified that the opinion mentioned in the foregoing order has not been filed in his office (R 264).

Omitting the formal parts and the prayer, appellants's assignments of error are as follows:

"1. That Circuit Judge Kimbrough Stone and District Judge John H. Pollock sitting with District Judge Jacob Trieber, the presiding Judge of the United States District Court for the Western Division of the Eastern District of Arkansas, upon complainant's application for an interlocutory injunction in said cause, erred in not restraining and enjoining the defendant Arkansas Railroad Commission and the defendant Little Rock Gas & Fuel Company from interfering with complainant in the establishment of city border rates for gas suplied to the defendant Little Rock Gas & Fuel Company for distribution by the ~~said~~ Little Rock Gas & Fuel Company to its consumers in the city of Little Rock and vicinity, and in entering an interlocutory order and decree refusing the application for temporary injunction against the said Little Rock Gas & Fuel Company.

"2. That Circuit Judge Kimbrough Stone and District Judge John H. Pollock sitting with Judge Jacob Trieber, the presiding judge of the United

ant to each of them for distribution by them to their respective consumers was not for that reason within the jurisdiction of the defendant Arkansas Railroad Commission.

"5. That it was error to deny the injunction as to Little Rock Gas & Fuel Company and the Consumers' Gas Company upon the ground that complainant in transporting natural gas from the gas fields in Louisiana and delivering the same to the Little Rock Gas & Fuel Company and the Consumers' Gas Company at the city borders of Little Rock and Hot Springs, respectively, for distribution by each of said companies to the respective consumers of each, is engaged in interstate commerce of a national character, and not with respect thereto subject to regulation by the Arkansas Railroad Commission.

"6. That it was error to deny the injunction as to the Little Rock Gas & Fuel Company and the Consumers' Gas Company upon the ground that the special act of the Legislature of Arkansas, No. 443, approved March 25, 1921, was constitutional in its entirety, and that the Arkansas Railroad Commission had no jurisdiction to establish city border rates for gas delivered to distributing companies because of that provision of said Special Act No. 443 providing 'that the Arkansas Railroad Commission shall have no jurisdiction or power to modify or impair any existing contracts for supplying gas to persons, firms, corporations, municipalities or distributing companies.'

"7. That it was error to deny the injunction as to the Little Rock Gas & Fuel Company and the Consumers' Gas Company upon the ground that the Arkansas Railroad Commission had no power to establish city border rates under the provisions of Act. No. 124 of the Legislatue of Arkansas establishing the Arkansas Railroad Commission, approved February 15, 1921, as that act conferred upon the Arkansas Railroad

States District Court for the Western Division of the Eastern District of Arkansas, upon complainant's application for an interlocutory injunction in said cause, erred in not restraining and enjoining the defendant Arkansas Railroad Commission and the defendant Consumers' Gas Company from interfering with complainant in the establishment of city border rates for gas supplied to the defendant Consumers' Gas Company for distribution by the said Consumers' Gas Company to its consumers in the city of Hot Springs and vicinity, and in entering an interlocutory order and decree refusing the application for temporary injunction against the said Consumers' Gas Company.

"3. The interlocutory order and decree should have also been granted against, and the judges sitting on said application erred in not granting it against the defendants Little Rock Gas & Fuel Company and Consumers' Gas Company and each of them, restraining and enjoining them and each of them from maintaining in force as a basis of settlement between complainant and each of said companies respectively contracts between each of said companies and complainant providing for payment to complainant of the per cent named in said respective contracts of the gross amounts collected from its consumers by each of said companies, and in not authorizing complainant to establish city border rates to be paid by each of said companies for gas delivered by complainant to them respectively as distributing companies for sale and distribution by them to their consumers in the respective cities served by each of them.

"4. That it was error to deny the injunction as to the Little Rock Gas & Fuel Company and the Consumers' Gas Company upon the ground that the contract of complainant with each of said companies related to the sale of natural gas in interstate commerce, and that the fixing of the rate to be paid by each of said companies for natural gas delivered by complain-

Commission the full exercise of the police power of the State of Arkansas in the matter of regulating rates and service of all public utility companies, which included the making of rates to be charged to or price to be paid by distributing companies for natural gas delivered to them for distribution to their consumers in communities served by such distributing companies.

"8. It was error to deny the injunction as to the distributing companies, the defendants Little Rock Gas & Fuel Company and the Consumers' Gas Company, because the effect of complainant's continuing to supply natural gas to said distributing companies and to each of them under the percentage contracts, whereby complainant is required to stand all the loss occasioned by leakage and for unaccounted gas within the plants and systems of said distributing companies, imposes such a burden upon complainant as to confiscate and destroy its property and thereby destroying its ability to render service to its patrons and the public in the several towns and communities served by it direct."

ARGUMENT.

The failure of the judges, before whom the application for temporary injunction was heard, to file a written opinion in support of their order granting appellant only partial relief leaves a wide range for speculation as to the grounds upon which a temporary injunction was denied as against the distributing companies. The granting of relief as against the maintenance in force of the old rates, alleged by appellant to be confiscatory, in the several municipalities and unincorporated towns served by appellant presupposes a finding that said rates were confiscatory and eliminates from consideration the evidence adduced on the valuation of appellant's property, the cost of operating same and the net operating revenue derived therefrom. A condensed statement of the evidence is made a part of the record, but we have refrained from abstracting same for the reason that even partial relief could not have been granted except upon a finding that the existing rates were confiscatory.

The judges could not have made their decision upon the ground that final legislative action in the process of making the rates had not been had and have enjoined the enforcement of the existing rates as to municipalities and unincorporated towns served through distributing systems owned by appellant. Therefore, we may assume that they sustained appellant's contention that the circuit court of Pulaski County, Arkansas, and the Supreme Court of the State

of Arkansas, to which, under the provisions of the Railroad Commission Act, appeals from the decisions of the Railroad Commission may be prosecuted, can act only in a judicial capacity in reviewing the orders of the Railroad Commission. However, since jurisdiction of the Federal Court can be sustained only in the instant case upon the theory that the order of the Railroad Commission was the final legislative act under the laws of Arkansas, it would seem pertinent to review the history of the Arkansas legislation and to determine whether the courts to which the act creating the Commission provides for appeals can act in a legislative capacity.

Having fixed the jurisdiction of the Federal Court as a court of equity to grant relief against confiscatory rates, where the final step has been taken in the body vested with legislative authority, the decision of the judges could have been based only on the following theories: (1) That the State, in the exercise of its police power, had not delegated to the Railroad Commission the power to modify contracts; or, otherwise expressed, that act 443 of the Legislature of Arkansas, approved March 25, 1921, prohibiting the Railroad Commission from altering, changing, modifying or impairing existing contracts with distributing companies was a constitutional enactment; (2) that the fixing of prices or the establishing of rates to be paid by the distributing companies for gas sold by the producing company to them and delivered into their distribution systems at their respective city

gates would impose a direct burden upon interstate commerce.

The latter theory is predicated upon the ground that the transportation and sale of natural gas in interstate commerce is of a national character prohibiting the States from regulating it, although Congress has not undertaken to exercise the regulatory power vested in it; that the commerce in natural gas does not admit of a diversity of treatment according to the special requirements of the local conditions permitting the States to act within their respective jurisdictions until Congress sees fit to act. The question mooted was not raised by appellees at the hearing, but the decision of the judges, as we understand, was based solely upon this theory. With this preliminary analysis we will present our argument in the order above set out.

**LEGISLATIVE POWER CANNOT BE CONFERRED UPON THE
COURTS UNDER SECTIONS 1 AND 2 OF ARTICLE IV
OF THE CONSTITUTION OF ARKANSAS.**

Sections 1 and 2 of Article IV of the Constitution of Arkansas are as follows:

"(1) The powers of government of the State of Arkansas shall be divided into three distinct departments, each of which to be confided to a separate body of magistracy, to-wit: Those which are legislative to one, those which are executive to another, and those which are judicial to another.

"(2) No person or collection of persons being one of these departments shall exercise any power

belonging to either of the others, except in the instances hereinafter expressly directed or permitted."

Act 124 of the Legislature of Arkansas, approved February 15, 1921, created the Arkansas Railroad Commission and vested in said Commission all jurisdiction in the matter of regulation of rates for public utility companies not exclusively vested by the terms of said act in municipal councils for cities of the first and second class. The municipal councils were given exclusive jurisdiction in the matter of regulating rates for public utilities for all services rendered by such utilities within the limits of such municipalities.

Section 20 of act 124 of the Legislature of Arkansas, approved February 15, 1921, prescribes the method of taking an appeal from the Railroad Commission to the circuit court of Pulaski County, Arkansas, and defines the power and authority of the circuit court on such appeals as follows:

"The said circuit court shall thereupon review said orders upon the record presented as aforesaid in the case and enter its finding and order thereon, *therein directing that action be taken by said Commission in conformity therewith*, unless an appeal from said order to the Supreme Court of this State shall be taken within the time herein specified, and in case of such appeal to await the further orders of said circuit court."

Section 21 deals with appeals to the Supreme Court of the State, which it is unnecessary in this connection to consider.

Section 19 provides the method of appeal from orders or ordinances passed by city councils fixing rates, and provides for trial *de novo*. It defines the power and authority of the circuit court on appeal as follows:

"The court in reviewing the action of the council or commission (city commission) shall hear evidence and determine what rates would afford appellant valid and reasonable rates for the service rendered, and shall enter an order setting out such rates and cause the same to be certified to the council or commission, *and such council or commission shall thereupon fix such rates as shall be in conformity with the finding of the court*, provided either party shall have the right to appeal to the Supreme Court. * * *"

The fixing of rates for the future is a legislative function, and that part of section 19 above quoted clearly imposed that duty upon the circuit court. It leaves no option in the city council or city commission but to fix such rates as shall be in conformity with the finding of the court. While the language of section 20, applicable to appeals from the Railroad Commission, is somewhat different, the circuit court is required to review the record not to determine whether the rates prescribed by the Commission are unreasonable or unlawful, but to make findings and orders, based on the record, to be certified to the Commission, directing and requiring that action be taken by the Commission in conformity with such findings and orders. In other words, no discretion is left in the Commission, but if

is compelled to enter the order on appeals involving rates which the circuit court directs it to enter.

In the case of *Helena Water Company v. City of Helena*, 277 Fed. 66, the District Court for the Eastern District of Arkansas, in a case where its jurisdiction was challenged upon the ground that the action of the city council of the city of Helena in establishing rates for the Helena Water Company was not the final legislative action, after reviewing the provisions of act 124 providing for an appeal, and the decisions of the Supreme Court of Arkansas involving appeals from various administrative boards, held that,

"In view of these provisions of the Constitution (sections 1 and 2 of art. IV), and its construction by the court of last resort of the State, the court is of the opinion that the proceeding under section 19 of the act although denominated 'An Appeal' is, in fact, so far as it applies to the sufficiency of the rates, a judicial proceeding, and if the necessary facts authorizing a national court to assume jurisdiction exists, it is its duty to exercise it when invoked; that the power of the court to establish rates for the future is clearly a legislative act and, under the Constitution of the State, cannot be conferred on the judiciary department and is therefore unconstitutional. (Citing *State v. Hutt*, 2 Ark. 282; *County of Pulaski v. Irwin*, 4 Ark. 473; *State Bank v. Curran*, 10 Ark. 142; *Kilbourn v. Thompson*, 103 U. S. 168)."

The court found that the unconstitutional part of the act is separable from the remaining provisions of the act, and concluded its opinion with the following paragraph:

"The conclusion of the court is that while the court is without jurisdiction to establish rates for the future, it has the same jurisdiction to determine whether the rates are confiscatory as the circuit courts of the State are given by the act, and the contention that this action is to be ruled by the Prentis case is untenable."

The jurisdiction of the Federal Court is sustained whether the State statutory method of appealing from the Railroad Commission to the circuit court and Supreme Court be regarded as an exercise of legislative or judicial power. If legislative, it is clearly invalid, because the State Constitution forbids the exercise of legislative power by a State judicial body, and the circuit and Supreme Courts are constitutional courts (Ark. Const. Sec. 1 of Art. VII); if the power thus granted is judicial in character it is obvious that the State cannot restrict appellant to State courts to determine Federal rights. (*Prentis v. Atlantic Coast Line*, 211 U. S. 210, 228; *Bacon v. Rutland R. R. Co.*, 232 U. S. 134, 137; *St. Louis Southwestern Railway v. Commissioners*, 265 Fed. 524).

In the case of *Bacon v. Rutland Railroad Company* (232 U. S. 134) the railroad company was held to be free to assert its rights in the Federal Court without appeal to the State Supreme Court from the decision of the State Commission, because under the terms of the statute the State Supreme Court was invested with judicial and not legislative authority.

In the case of *Detroit & Mackinac Railroad Company v. Michigan Railroad Commission* (235 U. S.

402), it was held that under the Michigan Railroad Commission Act the function of the Supreme Court of the State in reviewing an order of the Commission fixing rates is judicial and not legislative. Relief was denied the railroad company in the Federal Court upon its application to enjoin the enforcement of the rates established by the Commission because the case had gone to the Supreme Court of the State and its decision in the exercise of the judicial function conferred upon it was held to be *res adjudicata*.

In the Rutland case the Federal Court took jurisdiction because the action of the State Commission was the final legislative action and the railroad company elected to apply to the Federal Court to enjoin confiscatory rates instead of prosecuting an appeal through the State courts.

No case has arisen in the Supreme Court of Arkansas wherein the question as to whether the provisions of sections 19 and 20 of act 124, attempting to confer jurisdiction on the circuit courts to fix rates for the future and to compel the city councils and Railroad Commission to enter orders establishing rates in conformity with the rates so fixed, is unconstitutional because the courts cannot exercise legislative functions.

Under the Corporation Commission Act the Supreme Court of Arkansas, in the case of *Clear Creek Oil Company v. Fort Smith Smelter Company* (148 Ark. 264) held that the Railroad Commission "acts in a quasi-judicial capacity, and its orders affecting

property rights are subject to review by the courts in such manner as may be prescribed by the Legislature; the name given to the method of review by the Legislature, is not important, since it is clear that the purpose of the statute was to provide for a review by the circuit court on the record made before the Commission, and also provide for an appeal to this court, which latter provision is merely declaratory of the right of appeal conferred by the Constitution."

That decision is apparently based on the principle of judicial review, especially as the court treats the legislative body to which was delegated the authority to make rates as also acting in a quasi-judicial capacity.

The power vested in the circuit courts under Act 571 of the Acts of 1919, creating the Corporation Commission in the Smelter case is quite different from the power vested in the circuit courts under act 124 of the Acts of 1921, and the court could well hold that the power conferred on circuit courts under act 571 was judicial and uphold the procedure of judicial review as set out in the Act. In the Corporation Commission Act (No. 571) the authority vested in the court is defined as follows:

"Said courts shall in a summary manner have power to review said causes, both as to the facts and the law, and to vacate or modify any such order found unreasonable or unlawful, or contrary to the evidence."

This is in sharp contrast with the provisions contained in sections 19 and 20 of said act 124, which require the circuit court to certify its findings to the city councils or Railroad Commission for orders to be entered *in conformity therewith.*

All subsequent decisions of the Supreme Court referring to the jurisdiction of the courts under either of the acts refer to or cite the ruling in the Clear Creek Oil case, but in none of them has the question as to whether the legislative power could be conferred on the courts under our Constitution been raised or decided, and all expressions by the court in subsequent decisions are mere dicta. For instance, in the late case of *Van Buren Water Works v. City of Van Buren*, decided by the Supreme Court February 20, 1922, the court in the last paragraph of its opinion uses the following language, and cites the Clear Creek Oil case to support it, namely:

"It was within the power and the duty of the circuit court to fix such a rate according to the testimony in the record as was reasonable and would afford a just return upon the investment."

This dictum, taken in its broad sense, would mean that the circuit court had the power to fix rates for the future; such power, we have seen, is legislative in its nature and not judicial, yet the court cites to support its statement the Clear Creek Oil case. The question as to whether the circuit court could exercise a power to make rates for the future was not involved or discussed in that case.

The questions involved in the case were questions of procedure in the Supreme Court, depending upon whether the Supreme Court in reviewing the decisions of the circuit court, to which court an appeal had been taken from the Corporation Commission, should be governed by the rules of procedure set out in the Corporation Commission Act or the rules of procedure set out in the Railroad Commission Act which was passed a few days after the appeal had been prayed from the Corporation Commission; or, whether it should be reviewed only for error, as on other appeals from the circuit court. The court did not pass upon or determine under which procedure it was acting, simply finding that, under the undisputed evidence, in any event the old rates which the circuit court compelled the Water Company to maintain in effect were unremunerative upon any reasonable valuation of the property; that the fact that the new rates were unreasonable did not justify the court's order in compelling the company to restore old rates which were confiscatory.

The court in its decision refers to the case of *St. Louis, Southwestern Railroad Company v. Stewart*, 150 Ark. 586. This case is cited to sustain the statement by the court that, "The circuit court, under the statute, hears causes of this kind *de novo*, and not merely for the purpose of reviewing the proceedings before the Commission for error," and for that reason it was not material that part of the testimony was taken prior to the ap-

pointment of two new commissioners who were members of the Commission at the time the final order was made. The court, in saying the case was tried *de novo* in the circuit court necessarily referred to trials under the Railroad Commission Act, as on appeals from orders of the Corporation Commission the circuit court could only review the record that had been made before the Commission. In the Stewart case, however, the decision appealed from was made by the Corporation Commission, just as it was in the Van Buren Water Case, and the same questions as to procedure were raised as were raised in the Water Case, and again the court failed to pass upon the question of procedure. The court did, however, say that there is a question "which might raise itself, that is, whether or not the Legislature has the power to change the practice in this court on appeals in law cases from a review for error to a trial *de novo* as in chancery cases. We do not deem it necessary to decide these questions, for if we adopt the practice most favorable to the appellant and review the evidence *de novo*, as in chancery cases, we do not find that the conclusions of the Corporation Commission and of the circuit court on appeal are contrary to the preponderance of the evidence." The court does, however, in said opinion use very significant language in showing that it construed the provisions of the Corporation Commission Act relating to appeals as vesting, or attempting to vest, only judicial powers in the courts, and that it took the same view as to the meaning of the pro-

visions relating to appeals from the Railroad Commission Act. The language referred to is as follows:

"The statutes of the State lodged that power (the discretionary power of determining the reasonableness of its orders), primarily, in the Corporation Commission, and have since transferred it to the Railroad Commission, and it was not the purpose, we conceive, of the framers of the statute in allowing an appeal to substitute the judgment of the court *unless it appears that an error was made by the Commission in its conclusions*" (page 695).

The Supreme Court of the State seems to have passed upon all these questions without making any exact definition of the power and authority of the courts, thus, as stated by Judge Trieber in the Helena water case:

"The Supreme Court of the State in a number of cases has held that in appeals from assessments of benefits by improvement districts the circuit courts of the State act in a judicial capacity. In *Missouri Pacific Railroad v. Conway County Bridge District* (134 Ark. 292-297), which was an appeal from such an assessment, the court said: 'The circuit court acts in a judicial and not in an administrative capacity, and under the Constitution an appeal to this court will lie from all final judgments and orders of the special proceedings, though the right be not expressly granted in the statute authorizing such proceeding.' In *St. Louis, Southwestern Railway v. Commissioners of Road Improvement District Number Two*, 265 Fed. 524, the United States Circuit Court of Appeals for this circuit held that such an appeal is a suit which may be removed to the national court for diversity of citizenship. It is true that the Supreme Court of the State in *Missouri-Pacific Railroad v. Izard County*

Highway Improvement District, 143 Ark. 261, held that such a proceeding is not removable, but the opinion in that case was filed five days before the opinion in the case of *St. Louis Southwestern Railway v. Commissioners of Road Improvement District Number Two, supra*, and neither court knew of the decision of the other. *Although the court held in that case that it was not a judicial proceeding which could be removed to the national court, it proceeded to dispose of the case on its merits, notwithstanding that the Constitution of the State separates legislative, executive and judicial powers."*

THE RAILROAD COMMISSION UNDER THE STATE STATUTES
HAD FULL AND COMPLETE JURISDICTION TO ESTABLISH CITY GATE RATES FOR GAS SUPPLIED BY APPELLANT TO THE DISTRIBUTING COMPANIES.

The basis of the attack upon the jurisdiction of the District Court, as a Federal Court, to consider appellant's prayer to enjoin the Commission and the distributing companies from interfering with appellant's substitution of city gate rates for the percentage arrangement provided for in the divisional contracts with the Little Rock and the Consumers companies is that the Railroad Commission had, under the State statutes, no jurisdiction over the rates or arrangements between appellant and these two distributing companies; that, if such statutory authority existed, yet, such authority could not be legally conferred by the legislature because such arrangements and rates are purely private matters not subject to police control.

Appellant controverts both of these propositions. It would seem clear that such transactions are not purely private, in the sense of being removed from public regulation. Appellant is, as to its gas business, engaged in business as a public utility. Its ultimate business is the sale of gas. Its sales of gas to the two distributing companies are no more sales in a private capacity than its sales to a large industrial plant. What the purchaser does with the gas bought has no bearing, so far as the seller is concerned, on the character of the transaction. The distributing companies are purchasing gas from a public utility engaged in the business of selling gas. These sales to the two distributing companies are as much subject to the police power as sales to any other customers. If they are subject to such regulation no contract between the parties can abrogate, limit or affect this power of regulation and all such contracts are presumed to have been made in contemplation of a possible exercise of this power.

Union Dry Goods Company v. Georgia Public Service Corporation, 248 U. S. 372.

The power of making rates for and regulating the service of public utility companies was, by Act 571 of the Legislature of Arkansas, approved April 1st, 1919, vested in the Arkansas Corporation Commission, which Commission was created by said Act.

Section 8 of said Act provided as follows:

"The Commission shall have the power, after reasonable notice and after full and complete hearing, to enforce, originate and establish, modify, change, adjust and promulgate tariffs, rates, joint rates, tolls and schedules for all public service corporations; and whenever the Commission shall, after notice and hearing, find any existing rates, tolls, tariffs, joint rates or schedules unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of the law, the Commission shall, by an order fix reasonable rates, joint rates, tariffs, tolls, charges or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory, inadequate or otherwise in violation of any of the provisions of this law."

The Supreme Court of Arkansas has construed said provision as vesting the power in the Arkansas Corporation Commission to change the then existing franchise rates between municipal corporations and public utilities, and to make fair and reasonable rates without regard to contract limitation.

Camden v. Arkansas Light & Power Company,
145 Ark. 208.

Clear Creek Oil & Gas Company v. Fort Smith Smelter Company, 148 Ark. 260.

Harrison Electric Company v. Citizens Ice & Storage Company, 149 Ark. 502.

In the Camden case the Court, construing the Corporation Commission Act, said:

"The policy of the Act was to create one regulatory agency to establish just and reasonable rates that public service utilities might charge the public for such service, and to change unjust and unreasonable franchise rates existing between individuals or municipalities and such utilities. The questions are, can the state withdraw this power from the municipalities of the state and transfer it to another agency; and, can it empower the new agency to change the franchise rates theretofore agreed between the municipalities and the public utilities. These questions are answered in the affirmative by the decided weight of authority. The judicial opinions bearing upon the questions, by the highest state and national tribunals, *are based upon the reserve or sovereign police power of the states.*

The court, after citing and reviewing State and Federal decisions supporting the power of the Corporation Commission to disregard franchise or contract rates made by public utilities in the exercise of its power of establishing reasonable and just rates, said:

"There are many other authorities confirming the doctrine that to regulate or alter rates charged, or to be charged, by public utilities, is an inherent attribute of police power or sovereignty existing in the state, which may be exercised at any time through any state agency for the purpose of establishing just, equitable and reasonable rates under such circumstances as may exist at the time. *It is seemingly an attribute of sovereignty which cannot be contracted away, and in contemplation of which all contracts or agreements must be made.*"

In the case of *Clear Creek Oil & Gas Company v. Fort Smith Smelter Company, supra*, the Court held

that the schedule of rates for gas in the contract of the Utility Company with the Smelting Company was subject to control by the Corporation Commission "even though the statute authorizing such regulations was not passed until after the contracts were executed."

L. & N. R. R. Co. v. Motley, 219 U. S. 482.

State Belt Elec. St. Ry. v. Public Service Commission, 73 Pa. Sup. 493.

Prior to the enactment of the Corporation Commission Act the power to change franchise rates was vested in municipal councils and no central regulatory body had been established to fix reasonable rates and regulations for service rendered by utility companies outside of the limits of municipalities. The state delegated its reserve police power in the matter of regulation of rates to the Corporation Commission for all services performed by the utilities, whether within or without the limits of cities of the first and second class, thereby bringing within the jurisdiction of said Corporation Commission the right to change and alter all public or private contracts that the utility companies had prior thereto entered into, in so far as such contracts were an inhibition against the establishment by the Corporation Commission of reasonable and just rates for services performed by such utilities.

The General Assembly of Arkansas for the year 1921 repealed the Corporation Commission Act and, by Act 124, approved February 15, 1921, established

the Arkansas Railroad Commission, vesting in said Commission all jurisdiction in the matter of regulation of rates for public utility companies not exclusively in municipal councils for cities of the first and second class.

Under Section 17 of the Act such municipal councils were given power as follows:

"From time to time to initiate, fix, promulgate, regulate, modify, amend, adjust, readjust or otherwise make and determine fair and reasonable rates to be charged by all public utilities for furnishing public utility service within such municipalities, which rates shall be so determined and fixed by an order or ordinance after a hearing had either upon its own initiative or upon application of any such utility to such municipal council or city commission."

Under Section 6 of said Act the Commission was vested with the following power:

"After reasonable notice and after full and complete hearing, to enforce, originate and establish, modify, change, adjust and promulgate tariffs, rates, joint-rates, tolls and schedules for all public service corporations, companies and utilities, and all rules and regulations with reference thereto, and orders directing the performance of any duties devolving on said company, utility, common carrier or public service corporation under the terms of this Act; and whenever the Commission shall, after notice and hearing, find any existing rates, tolls, tariffs, joint rates or schedules unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of the law, the Commission shall by an order fix reasonable rates, joint rates, tariffs, tolls,

*charges or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory, inadequate or otherwise in violation of any of the provisions of this law; provided, however, that nothing herein shall authorize said Commission to make any rule, regulation or order whatever to be effective within the limits of any municipality of this state with reference to any tariff, rate, toll, schedule, deed or action of any public service corporation, company or public utility operating within such municipality as (a) *** gas company, pipe line company for transportation of oil, gas or water *** it being the intention of this Act, herein-after more particularly expressed, to confer upon the municipal councils and city commissions of this state, jurisdiction as to such matters, so far as same are effective within the limits of any municipality of this state."*

The foregoing section was a substantial re-enactment of Section 8 of the Corporation Commission Act, changing it so as to vest authority in the municipal councils in matters of rates and services within the limits of such municipalities. In construing the power vested in the Railroad Commission and the municipal councils under said Section, it must be considered with reference to the decision of the Supreme Court of Arkansas in the case of *Camden v. Arkansas Light & Power Company, supra*, construing a provision in substantially identical terms contained in the Corporation Commission Act. Considering it under this rule of construction, we find that the delegation of the power to the Corporation Commission to abrogate or disregard contracts, in the exercise of the police power

vested in it to establish just, equitable and reasonable rates, was transferred to the Railroad Commission and vested in it as to all matters within its jurisdiction, and likewise vested in municipal councils as to all matters in their jurisdictions, as fully and completely as it had been vested in the Corporation Commission.

There are no provisions of Act 124 creating the Railroad Commission limiting or restricting the power vested in the Railroad Commission and in the municipalities under the sections quoted. It is true that Section 23 provides that nothing in said Act shall deprive or be construed as depriving any municipality of the benefits or rights accrued, or accruing, to it under any franchise or contract to which it may be a party, and that no court exercising jurisdiction under said Act shall deprive such municipality of any such benefit or right, but this provision is inapplicable to Appellant, because at the time of the passage of said Act 124 Appellant was operating in the several cities and towns in which it distributed gas under an Indeterminate Permit granted it by the Corporation Commission under the authority of the provisions of said Act 571.

Town of Pocahontas v. Central Power & Light Co., 152 Ark. 276.

At the time of the passage of the Railroad Commission Act the Corporation Commission was engaged in the hearing of Appellant's application filed with

said Commission on December 31, 1920, for an increase of its rates, including the establishment of city border rates for gas supplied to distributing companies in the cities of Little Rock and Hot Springs.

Section 22 of said Act 124 contains the following provision with reference to the transfer of pending cases to the Arkansas Railroad Commission, namely:

“That all investigations, proceedings or hearings that may be pending before the Arkansas Corporation Commission at the time this Act becomes effective, *and the hearings of which are embraced within the powers herein conferred on the Arkansas Railroad Commission*, shall be transferred to the Arkansas Railroad Commission for such adjudication as may be made by its under the terms of this Act.”

As we have seen, under the terms of the Act, the Railroad Commission was given jurisdiction in the matter of rates of public utility companies for all services outside of the limits of municipalities. Appellant served patrons and consumers in the unincorporated towns of Mabelvale, Bryant, Bauxite, Gifford, Perla, Donaldson, Gum Springs, Boughton, Beirne and Doddridge, all in the State of Arkansas, and delivered gas at the city borders of the cities of Little Rock and Hot Springs to the distributing companies operating within said cities. As a result, the Railroad Commission was vested with jurisdiction to fix the price at which Appellant would be required to sell gas to the distributing companies in the cities of Little Rock and Hot Springs, and to fix rates for serv-

ices to Appellant's patrons and consumers in the aforesaid unincorporated towns. By the aforesaid provisions of Section 22 of said Act, the hearing of Appellant's application then pending before the Corporation Commission was automatically transferred to the Railroad Commission for adjudication as to the rates to be charged by Appellant for services in unincorporated towns and the prices to be charged by it for wholesaling gas to the distributing companies operating within the cities of Little Rock and Hot Springs, and it was the duty of the Railroad Commission upon its organization to proceed with the hearing for said purposes.

Notwithstanding the effectual transfer of jurisdiction from the Corporation Commission to the Railroad Commission of Appellant's pending application for an increase of rates in said unincorporated towns and for the establishment of city border rates, the Legislature of Arkansas, by Act 443, approved March 25th, 1921, amended said Section 22 so as to transfer to the Railroad Commission by number and name Appellant's application for an increase of rates, and in said amendment restricted the Railroad Commission in the exercise of the jurisdiction vested in it under said Act 124 by prohibiting it from modifying or impairing "any existing contracts for supplying gas to persons, firms, corporations, municipalities or distributing companies", and providing that such contracts shall not be affected by said Act 124 or the provisions of said Act 443.

Act 443 of the Legislature of Arkansas approved March 25, 1921, amending Act 124 approved February 15, 1921, is as follows:

Section 1. "That Section 22 of Act No. 124 of the General Assembly for the year 1921, entitled, 'An Act to amend Act No. 571 of the General Assembly of the State of Arkansas, for the year 1919, entitled, 'An Act to create the Arkansas Corporation Commission and to define its powers and duties, approved April 1, 1919, and to regulate public utilities, public service corporations and for other purposes', approved February 15, 1921, be amended to read as follows:'"

"Section 22. All records, papers, furniture and stationery under the control of the Arkansas Corporation Commission at the time of the passage of the Act of which this is an amendment, shall be turned over to the Arkansas Railroad Commission and remain in its custody, and all investigations, proceedings and hearings that were pending before the Arkansas Corporation Commission at the time of the passage of the Act of which this is an amendment, and the hearings of which are embraced within the powers conferred on the Arkansas Railroad Commission, shall be transferred to the Arkansas Railroad Commission for such consideration, orders and determination as may be made by it under the terms of the act of which this is an amendment, and the petitions pending before the Arkansas Corporation Commission at the time of the passage of the act of which this is an amendment, involving regulations of service and rates for natural gas, and numbered 417, 418 and 423 on the records of said Arkansas Corporation Commission, are transferred to the Arkansas Railroad Commission for decision and the making of such orders and rates as may be appropriate, and the Arkansas Railroad Commission shall consider the testimony that has heretofore

been taken in said cases and hear such further testimony as may be appropriate to fully present such cases, and such orders and rates as may be made by the Arkansas Railroad Commission in the said gas cases shall apply not only to the service outside of municipalities, but also to the service and rates for supplying natural gas within municipalities or to distributing companies operating within such municipalities, except that the Arkansas Railroad Commission shall have no jurisdiction or power to modify or impair any existing contracts for supplying gas to persons, firms, corporations, municipalities or distributing companies, and such contracts shall not be affected by this act or the act of which this is an amendment.

"From the decisions of the Arkansas Railroad Commission in such cases appeals may be prosecuted to the Circuit Court and Supreme Court, and such appeals shall be taken, proceeded in, heard and disposed of as provided in sections 20 and 21 of the act of which this is an amendment; *provided, however,* that on the determination of such natural gas cases by the Arkansas Railroad Commission and the decision on any appeals therefrom and the making of orders by the Commission in pursuance to orders of the court made on such appeals, the powers and jurisdiction of the Arkansas Railroad Commission to regulate these particular utilities and fix their rates shall be such only as is conferred by other sections of the Act of which this is an amendment. In all cases where the Arkansas Corporation Commission made a final decision *or order* before the Act of which this is an amendment became effective and the time for an appeal has not elapsed, any party to said proceedings shall have the right to have the matter heard on appeal as is provided in sections 20 and 21 of the Act of which this is an amendment."

Section 2. "This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared, and it shall take effect and be in force on and after its passage."

An examination of said Act 443 which, by its terms, was an amendment of Section 22 of Act 124, discloses that substantially the same and a paraphrase of the language used in Section 22 of Act 124 was used in the amendment to transfer Appellant's application for an increase of rates to the Railroad Commission, the language being, "and all investigations, proceedings and hearings that were pending before the Arkansas Corporation Commission at the time of the passage of the Act of which this is an amendment, and the hearings of which are embraced within the powers conferred on the Arkansas Railroad Commission, shall be transferred to the Arkansas Railroad Commission for such consideration, orders, and determination as may be made by it under the terms of the Act of which this is an amendment." In the original Act pending cases were transferred to the Railroad Commission "for such adjudication as may be made by it" under the terms of said Act 124; in the amended Act the pending cases were transferred "for such consideration, orders and determination as may be made by it under the terms of said Act 124", the language in each having the same meaning.

Said Special Act recognized that the jurisdiction for fixing rates within the limits of the several municipalities served by Appellant was, by Act 124, exclu-

sively vested in the municipalities, and said Special Act was passed to give additional jurisdiction on complainant's pending application to the Railroad Commission for the fixing of rates *within as well as without* the limits of said municipalities, and to vest in said Railroad Commission, in express terms, jurisdiction to establish city border rates. For these purposes the Act would have been justified as a proper regulatory measure in the pending cases, as a large amount of testimony had been taken involving the entire rate situation of Appellant, and the hearing had been nearly completed. The passage of the new law required applications to each municipality served by Appellant, twelve or fifteen in number, as well as prosecuting to a conclusion the hearing by the terms of the Act transferred to the Railroad Commission, as to the establishment of city border rates and rates for unincorporated towns. So, to make the Railroad Commission the agent of the municipalities to conclude the hearing begun was manifestly proper. But, in delegating authority to the Railroad Commission to act in Appellant's pending case, as the agent of the municipalities in fixing rates to become effective within the limits of such municipalities, the Act undertook to prohibit the Railroad Commission from modifying or impairing any existing contracts for supplying gas to *** distributing companies, *although the Commission might be wholly unable to establish reasonable and just rates unless it should set aside and disregard the provisions of the contracts between Appellant and said*

distributing companies. The beneficience of the Act was destroyed by the restriction.

Cases numbered 417 and 418 arose out of petitions filed by industrial consumers with the Corporation Commission asking the Commission to establish rules and regulations as to the furnishing of industrial gas, particularly with reference to the assumption of control by the Corporation Commission of the cutting-off, of the supply of industrial gas on occasions when it should become necessary to do so to protect domestic consumers. One of the petitions was filed against the Arkansas Natural Gas Company, and the other against the Pine Bluff Natural Gas Company which was no longer in existence, Appellant having acquired the property of the Pine Bluff Company and converted it from an artificial to a natural gas plant. Case number 423 was Complainant's application for an increase of rates and the establishment of city border rates. (R. 26.)

The nature of the petitions, one being against the old extinct Pine Bluff Company, explains the use of the plural in the latter part of the Act in referring to these "particular utilities." The body of said Special Act deals entirely with the transfer and the hearing of the said natural gas cases "numbered 417, 418 and 423." The second paragraph of the Act providing for appeals refers to said numbered cases as "such cases". A study of the provisions of said Special Act 443, commencing in the first paragraph with the language "and

the petitions pending before the Arkansas Corporation Commission at the time of the passage of the Act of which this is an amendment, involving regulations of service and rates for natural gas," and ending with the language in the second paragraph, "provided, however, that on the determination of such natural gas cases by the Arkansas Railroad Commission and the decision on any appeals therefrom and the making of orders by the Commission in pursuance to orders of the Court made on such appeals, the powers and jurisdiction of the Arkansas Railroad Commission to regulate these particular utilities and fix their rates shall be such only as is conferred by other sections of the Act (No. 124) of which this is an amendment," discloses that all that part of the Act beginning and ending as aforesaid dealt solely and entirely with the consideration and hearing of Appellant's application for an increase of rates and industrial consumers' application for regulations of service, and that the legislative prohibition against modifying or impairing existing contracts applied only to existing contracts of the Arkansas Natural Gas Company. It further appears from the language of the Act in the second paragraph that it applies only to the hearing of the pending application of the Arkansas Natural Gas Company for increase of rates, "the powers and jurisdiction of the Arkansas Railroad Commission" after the final determination of said application to be "such only as is conferred by other sections of the Act of which this is an amendment (Act No. 124)".

There is no merit in the contention that the prohibition was intended to be permanently engrafted on Act 124 and to be made applicable to all gas companies. It is true that the language that "such contracts shall not be affected by * * * the Act of which this is an amendment", standing alone, would support the contention, but when the clause is read in connection with the other provisions of the Act it seems obvious that it was limited to the hearing of the "natural gas cases" transferred to the Railroad Commission by said Special Act. So that, it has the same meaning as if it had read as follows: "and such contracts shall not be affected by this Act or the Act of which this is an amendment, *in the said gas cases*". An examination of the clause of the Act ending with the language "and such contracts shall not be affected by * * * the Act of which this is an amendment", discloses that the language of said clause is limited to the hearing and decision of the specific cases transferred to the Railroad Commission and to an expression of the power and jurisdiction of the Railroad Commission in the hearing and disposal of said specific cases. Therefore, when the language is used that such contracts, that is, existing contracts, between the Arkansas Natural Gas Company and the distributing companies, shall not be affected by this Act or the Act of which this is an amendment, it must be construed in connection with the entire context of the clause in which it appears. That part of the clause pertinent reads as follows: "* * * and the petitions pending before the

Arkansas Corporation Commission at the time of the passage of the Act of which this is an amendment, *involving regulations of service and rates for natural gas*, and numbered 417, 418 and 423 on the records of said Arkansas Corporation Commission, are transferred to the Arkansas Railroad Commission for decision and the making of such orders and rates as may be appropriate, and the Arkansas Railroad Commission *shall consider the testimony that has heretofore been taken in said cases*, and hear such further testimony as may be appropriate to fully present *such cases, and such orders and rates* as may be made by the Arkansas Railroad Commission *in said cases* shall apply not only to the services outside of municipalities, but also to the services and rates for supplying natural gas within municipalities, *or to distributing companies operating within such municipalities*, except that the Arkansas Railroad Commission shall have no jurisdiction or power to modify or impair any existing contracts (of the Arkansas Natural Gas Co.) for supplying gas to persons, firms, corporations, municipalities or distributing companies, *and such contracts* shall not be affected by this Act or the Act of which this is an amendment."

Now, if we examine with care the clause above quoted it will be found that "the petitions pending before the Arkansas Corporation Commission" were described as petitions "*involving regulations of service and rates for natural gas*", and are further described as being "*numbered 417, 418 and 423*". These

three petitions, as an examination of them will disclose, involve exactly what the amendment describes, that is, "regulations of service and rates for natural gas." (R. 26). In other words, the clause describes with particularity the three petitions for regulation of service and rates of Appellant. It requires the Railroad Commission to consider the evidence that has already been taken "in said cases", that is, upon said petitions, all of which were consolidated and heard together, and to hear such further testimony as may be appropriate to fully present "such cases." The clause then provides that "such orders and rates as may be made by the Arkansas Railroad Commission in said gas cases shall apply", etc. "In the said gas cases" merely refers to the three petitions appearing as the antecedent. The Commission is given the power in said gas cases to fix rates to *distributing companies*, except that it shall not have the power *in said gas cases* of impairing or modifying existing contracts, although that power existed under the Act "of which this is an amendment". That the language of the Special Act only applies to the specific cases transferred is made very definite and certain by the language contained in the following paragraph of said Special Act. The first clause of that paragraph reads, in part, as follows:

"From the decisions of the Arkansas Railroad Commission *in such cases* appeals may be prosecuted * * * heard and disposed of as provided in Sections 20 and 21 of the Act of which this is an amendment; provided, however, that on the determination *of such*

natural gas cases . . . the powers and jurisdiction of the Arkansas Railroad Commission to regulate these particular utilities and fix their rates shall be such only as is conferred by other sections of the Act of which this is an amendment".

Why specify upon determination "of such cases", or, as stated in another part of the sentence, "such natural gas cases," the powers and jurisdiction of the Arkansas Railroad Commission shall be restored as to these particular utilities as they existed prior to the passage of the Special Act, if it was intended by the language in the preceding paragraph, to-wit, "and such contracts shall not be affected by . . . the Act of which this is an amendment", to make a general amendment to the original Act prohibiting the Railroad Commission in any further hearing between the Arkansas Natural Gas company and any person, firm, corporation, municipality or distributing company with which it has contracted, from modifying or impairing the obligations of such contracts? If it had been intended to amend the Act generally, certainly the amendment would have been made applicable to any utility, or, at least, to all utilities engaged in the production and transportation and distribution of natural gas, and not limited to the Arkansas Natural Gas Company. But the Special Act is not made general.

SO MUCH OF ACT 443 AS PROHIBITED THE RAILROAD
COMMISSION IN THE EXERCISE OF THE POWER OF
MAKING RATES FOR NATURAL GAS SOLD TO DISTRIB-
UTING COMPANIES, FROM MODIFYING OR IMPAIRING
"EXISTING CONTRACTS FOR SUPPLYING GAS TO PER-
SONS, FIRMS, CORPORATIONS, MUNICIPALITIES OR DIS-
TRIBUTING COMPANIES", IS UNCONSTITUTIONAL AND
VOID.

We think it quite apparent from an analysis of said Act 443, that the Legislature singled out the Arkansas Natural Gas Company and imposed restrictions upon the Railroad Commission, in exercising the power delegated to it to investigate and fix reasonable rates for services rendered by Appellant, both within municipalities as well as outside of municipalities, and to distributing companies, that were not imposed in ascertaining and fixing reasonable rates for other utility companies, or for other utility companies engaged in the production, transportation and distribution of natural gas.

There was no foundation in reason or in the then existing conditions that justified such singling out of Appellant and the denial to it of the equal protection and security which is given to other utility companies engaged in the sale and distribution of natural gas under like circumstances. That provision of the Act is discriminatory and hostile to the interests of Appellant. It is the outgrowth of the passion and feel-

ing engendered by public agitation at the time Appellant's application for increase of rates and for the establishment of city border rates was being heard, the Legislature at that time being in session. As was said in the case of *Cotting v. Kansas City Stock Yards Company*, 183 U. S. 109:

"Every one has a right to demand that he be governed by general rules and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in all similar cases, would not be legitimate legislation, *but would be such an arbitrary mandate as is not within the province of free governments.* Those who make the laws 'are to govern by promulgated, established laws, not to be varied in particular cases but to have one rule for rich and poor, for the favorite at court and the countryman at plow'. This is a maxim in constitutional law, and by it we must test the authority and binding force of legislative enactments".

But said unconstitutional provision of the Act does not render the entire Act inoperative. The objectionable part is separable and may be eliminated from the Act without destroying or affecting that portion of the Act that invests the Railroad Commission with the jurisdiction to proceed with the pending cases and fix rates as agents of the municipalities for service within the limits of the municipalities, the same as it is authorized under Act 124 in the pending cases for services outside of the limits of municipalities.

When a statute is divisible, and only a part of it is repugnant to the Constitution, that part is rejected

and the balance upheld. *Ry. Co. v. Worthen*, 46 Ark. 312.

When part of an Act or of a section of an Act, is unconstitutional, that part will be considered by the courts as stricken out, and the constitutional part maintained, if it can be separated from the unconstitutional part and stand without it.

State v. Marsh, 37 Ark. 356.

Davis v. Gaines, 48 Ark. 370.

State v. DeSchamp, 53 Ark. 490.

Wells Fargo Express Co. v. Crawford County,
63 Ark. 576.

Where it is plain that the legislature would have enacted a statute without the attached proviso, such proviso is surplusage and it does not render the statute void.

Paine v. State, 124 Ark. 20.

Where a part of a statute is unconstitutional the courts will not declare the remainder void unless all provisions are connected in the subject matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning that it cannot be presumed the legislature would have passed the one without the other.

Cotham v. Coffman, 111 Ark. 108.

We submit under the language quoted above in the Cotham case that the provisions of Act 443 providing for the transfer of the cases for the judgment and decision of the Commission as to rates *within the limits* of municipalities as well as without the limits of municipalities, which latter jurisdiction the Commission was given under Act 124, are not so connected with the provision prohibiting the Commission in considering the cases from altering, changing, modifying or impairing the obligation of the contracts between Appellant and the distributing companies, as to render the entire Act void.

But if it should be held that the unconstitutional and void provision is not separable from the rest of the Act and that it vitiates and renders void the entire Act, still it would not affect the rights of Appellant as against the Railroad Commission and the distributing companies so far as relates to the establishment of city border rates and rates for service rendered by Appellant outside of the limits of municipalities.

If Act 443 is void in its entirety it leaves Act 124 unaffected by the unconstitutional restriction contained in said Act 443. Unquestionably the authority is conferred upon the Railroad Commission under Act 124, as hereinbefore fully set forth, to exercise to the fullest extent the police power of the State in the fixing of rates for all service rendered by Appellant outside the limits of municipalities. As we

said in the first part of the argument, Appellant's sales of gas to the two distributing companies are no more sales in a private capacity than its sales to a large industrial plant. What the purchaser does with the gas bought has no bearing, so far as the seller is concerned, on the character of the transaction. So sales to the two distributing companies are as much subject to the police power as the sale to any other customer. The vesting of jurisdiction in municipalities to make rates for service within the limits of the municipalities left in the Railroad Commission the full exercise of the power to make rates for all other service performed by public utility companies, which would include the wholesaling of gas to distributing companies; otherwise it would be unable to prevent unjustly discriminatory charges.

If Act 443 should be held unconstitutional in its entirety because it is vitiated by the unconstitutional provision, in singling out Appellant and making it subject to a rule that is not applicable to any other natural gas company or any other public utility engaged in the public utility business in Arkansas, then Appellant would be entitled to the relief it seeks on this appeal, that is, a temporary order against the Railroad Commission and the distributing companies restraining them from interfering with Appellant in establishing City Gate Rates; and would be entitled also to an order restraining the Commission from interfering with its establishing fair and reasonable rates for the

unincorporated towns and customers served by it outside of the limits of municipalities; provided, the State may exercise the power of fixing rates for the sale of gas, which becomes a subject of inter-state commerce. That the Commission has such power in the absence of Congressional action Appellant affirms. As to rates for gas sold within the limits of municipalities, the Railroad Commission would be without jurisdiction if said Act 443 should be held void in its entirety, and in that event, Appellant's bill would be dismissed as to the incorporated municipalities set forth in the Bill of Complaint, and Appellant to obtain relief against the confiscatory rates in such municipalities would be required to prosecute separate applications therefor in each of said municipalities.

THE REGULATION OF RATES BY A STATE ADMINISTRATIVE BODY IN THE STATE OF SALE OF A PUBLIC UTILITY COMPANY PRODUCING AND PURCHASING GAS IN ONE STATE, WHICH IT CONDUCTS THROUGH ITS OWN PIPE LINES FOR SALE IN THE ADJOINING STATE, DOES NOT IMPOSE A DIRECT BURDEN UPON INTERSTATE COMMERCE. THE REGULATION OF RATES AND THE ESTABLISHMENT OF RULES FOR SERVICE BOTH IN THE SALE OF THE GAS SO BROUGHT FROM THE ADJOINING STATE TO THE CONSUMERS AT THE BURNER TIPS AND TO OTHER UTILITY COMPANIES AT THE CITY GATES WHERE THE LINES OF THE TWO COMPANIES CONNECT, ARE, UNTIL CONGRESS HAS ACTED, A PROPER EXERCISE OF STATE POWER. IT IS A SUBJECT OF COMMERCE THAT DOES NOT REQUIRE A GENERAL SYSTEM OR UNIFORMITY OF REGULATION SO AS TO VEST THE POWER EXCLUSIVELY IN CONGRESS, BUT ADMITS OF A DIVERSITY OF TREATMENT ACCORDING TO THE REQUIREMENTS OF LOCAL CONDITIONS.

As stated in the preface to this argument, the answers of Appellees did not raise the issue that rates and regulations for gas sold by Appellant to the Little Rock and Hot Springs companies engaged in the distribution of the gas obtained from Appellant in the cities of Little Rock and Hot Springs, respectively, could not be established by State authority because the State enactments and regulations operated upon interstate commerce, nor was the question mooted at the trial.

Counsel for Appellants assumed, under the decisions of this court, to which reference will be made, that the commerce in natural gas produced in one State and sold in another State to other distributing companies, as well as distributed direct to the Gas Company's own consumers, did not admit or require a general system or uniformity of regulation, so as to vest the power exclusively in Congress. But, to the contrary, because of the public duties imposed inherent in the nature of the business, and of the many local conditions affecting the sale and disposal of the gas thus transported in interstate commerce, was subject to State regulation, in the absence of congressional action.

Accordingly, no evidence was introduced to show the varying conditions affecting the supply of gas that require local legislation with respect to the sale of gas by Appellant to the distributing companies operating in the cities of Little Rock and Hot Springs, to large industrial users, and to consumers taking gas from Appellant at the burner-tips in twenty-five cities and towns. But we think the facts sufficiently appear from those allegations of the Bill of Complaint, which are not controverted, and incidentally from the evidence of witnesses introduced in behalf of Appellant, to establish conditions warranting and requiring Commission regulation both as to prices and service, in order to prevent unjust discrimination and provide for adequate service and reasonable rates.

By reference to Exhibit J to the Bill of Complaint (R-71), it appears that Appellant's main line extends from the De Soto compressing station, marked "2" on the map, in the State of Louisiana, crossing the State line at or near the town of Ida, Louisiana, and extending thence in a northern and northeasterly direction to the city of Little Rock, with short trunk lines to the towns intervening between the State line and the city of Little Rock, as indicated on the map; and two main branch lines, one extending from Perla in a westerly direction to the city of Hot Springs, and the other from Perla in an easterly direction to the city of Pine Bluff. It appears that Bauxite is located 15 or 20 miles south of Little Rock, and that a short trunk line connected with the main line extends to Bauxite, which is the last point at which gas is distributed by Appellant before it delivers gas into the distributing system at Little Rock. The fields from which gas is and has been obtained in the State of Louisiana are numbered from "1" to "6," inclusive, on said map.

The Bill of Complaint alleges that Appellant serves each of the towns on the main line between the Arkansas-Louisiana State line and the city of Little Rock through its own distributing systems, and that it serves the city of Pine Bluff on a branch line extending from Perla through its own distributing system; that the gas for the cities of Little Rock and Hot Springs is delivered by Appellant to the local distributing companies operating in those cities (R. 1-2); it also appears, from the Bill of Complaint, which is

not controverted by the answers, that Appellant, before beginning the construction of its pipe line, had obtained franchises from several incorporated cities and towns along its line, had acquired the artificial plant of the Pine Bluff Gas Company at Pine Bluff for the purpose of converting it into a natural gas plant, and had entered into contracts with the distributing companies in the cities of Little Rock and Hot Springs (R. 4-10).

It thus appears that Appellant provided for outlets for its gas in the several towns and communities which it now serves direct, and in the cities of Little Rock and Hot Springs which received their gas through distributing companies, and that all of said agencies were related and connected together, forming the one connected system for the discharge by Appellant of its duties as a public utility company in the State of Arkansas.

The Little Rock contract contained the following clause :

"That these presents are made and accepted with full knowledge and notice of, and expressly subject to, all and singular, such duties as the said Arkansas Company (Appellant) *may owe in other areas of consumption than those hereinbefore set forth*, but never in such a way or manner as to permit of diserimination against the said Pulaski Company (the predecessor of the Little Rock Gas & Fuel Company), nor in any manner as to relieve the said Arkansas Company from the full exercise and effort on its part at all times to drill and develop wells in its said gas territory and furnish and supply to said Pulaski Company its re-

quirements of natural gas, and which said Arkansas Company hereby expressly agrees to do" (R-38).

A substantially similar clause was contained in the Hot Springs contract, section 8, p. 56 of the record.

The contract with the Little Rock Company obligated the Little Rock Company at all times to keep the whole of its plant and system in good order and condition *and reasonably free from leaks of every kind* (Sec. 5, p. 38). The contract with the Hot Springs Company required the Hot Springs Company to keep its line and its entire system for supply and distribution of natural gas in good order and condition and reasonably free from leaks and waste of every kind (Sec. 10 p. 56).

By far the largest demand for gas is in the cities of Little Rock and Hot Springs. The revenue obtained by Appellant, reduced to percentages, in these two cities is sixty per cent of the total gross revenue received by Appellant in the conduct of its public utility business. Exhibit B to the evidence of E. J. Cole shows the total amounts received from the cities of Little Rock and Hot Springs and the plants of Appellant, and it appears from these figures that the total receipts from all sources estimated for the year 1922, based on the business of 1921, would be \$1,871,236.96, of which \$1,110,322.45 would be received from the distributing companies at Little Rock and Hot Springs (R-139). The relation of the volume of gas sold and distributed by the distributing companies in the cities of Little Rock and Hot Springs to the total volume of

gas sold to distributing companies and distributed by Appellant through its own plants in the State of Arkansas, is seventy-two per cent. This percentage is obtained from the evidence of C. W. Kramer, given for the purpose of detailing the sales for the years 1920 and 1921 and the leakage in the plants of the distributing companies as well as the system of the Arkansas Company (R-130).

C. W. Kramer testified that the leakage in the Little Rock plant for the year 1920 was 732,397,000 cubic feet, and for the year 1921 was 834,209,000 cubic feet; that the Arkansas Company turned into the Little Rock system for each of the years that amount of gas over and above the amount accounted for by the Little Rock Company; that the total sales of gas by the Little Rock Company for the year 1920 was 3,934,988,000 cubic feet and for the year 1921 was 3,052,860,000 cubic feet; that to obtain the amount delivered to the Little Rock Company for each of the years there should be added the leakage as above set forth for each of said years. That converting the Little Rock plant into the equivalent of a three inch line, the leakage for the year 1920 per mile of equivalent three inch main was 3,143,000 cubic feet; for 1921 it was the equivalent of 3,580,000 cubic feet. That the company considered good practice to be 200,000 cubic feet per mile of equivalent three inch main; that the leakage or unaccounted-for gas in Little Rock for the year 1920 was fifteen times, and for the year 1921, seventeen times what it should have been, or good practice.

He also gave the leakage at Hot Springs but was unable to convert it into the equivalent of three inch main because of not having the exact mileage of the Hot Springs plant. The leakage in the Arkansas Natural Gas Company's distribution plants for the year 1921 was 291,643,000 cubic feet; the total gas accounted for in the Arkansas Natural Gas Company's distribution plant for 1921 was 1,899,494,000 cubic feet; adding the leakage just given you have the total amount of gas delivered into the Arkansas Company's distributing plants for the years 1921, 2,151,835,000 cubic feet, of which there was a leakage of 291,643,000 cubic feet, or a percentage of a little over ten per cent, while the leakage in the Little Rock and Hot Springs plants ran over twenty per cent. The leakage at the Pine Bluff plant, the largest city served by the Arkansas Company, for the year 1920 was 176,249,000 cubic feet; for the year 1921 it was 123,146,000 cubic feet; for the year 1920 the loss per mile of equivalent three inch main at Pine Bluff was 2,582,000 cubic feet, and for the year 1921 was 1,808,000 cubic feet, or 9.4 times more than good practice; the percentage of leakage to the total gas delivered into the Pine Bluff plant was approximately ten per cent, while the percentage of leakage at Little Rock and Hot Springs ran over twenty per cent (R. 130-131). The witness testified on cross examination that if the leakage is translated into percentages, 200,000 cubic feet per mile of three inch main might or might not be down as low as one or two per cent; that the gas company that has a leakage of

eight or ten per cent of their sales is fairly good practice (R-134). Exhibit A to E. J. Cole's evidence shows that the distribution expense for 1921 for the Pine Bluff district, for the Malvern district, for the Arkadelphia district, for the Gurdon district, the Garland City district, was increased over the year 1920. This was due to the increased expenditures for repair and maintenance of distribution lines, thereby reducing the loss by leakage (R. 136-137).

The American Bauxite plant and the Norton Company plant are located at Bauxite, a short distance south of Little Rock, and take their supplies from the main line before the Little Rock Company receives its supply at the city gate of Little Rock, thereby requiring, on account of the large quantity of gas taken by those companies, regulation as to the shutting off of the supply to those industries when there is a peak demand for domestic consumption in Little Rock. That the American Bauxite and Norton Companies are very large industrial users appears from the statement in the evidence of E. J. Cole of the amount of \$57,000 taken into the accounts for the year 1921 as a possible refund to those companies on account of a special rate of forty-five cents per thousand cubic feet made to them under an agreement to refund on the basis of the rate as finally adjusted (R-144).

For the purpose of adequate local regulation, the business of Appellant in Arkansas cannot be separated into parts. The delivery of gas brought from the

Louisiana fields to Appellant's consumers through its own distributing plants is commerce between the States in a commodity the same as the delivery of it at the city gates to the distributing companies, and no distinction can be made in the character of regulation to be imposed, because in the one instance it is delivered to individual consumers and in the other it is delivered to a distributing company which in turn distributes to individual consumers. Appellant is not a common carrier, and the exercise of power by the State Commission in regulation of Appellant's rates and service does not affect transportation except indirectly. No rates for transportation are fixed. Appellant does not carry gas for other companies or individuals, and only uses its lines for the conduct of its public utility business in the State of Arkansas, which embraces the sale of gas both in large quantities to distributing companies and large industrial users, such as the American Bauxite Company and the Norton Company at Bauxite, Arkansas, and to individual consumers in its own distributing plants.

A distinction, we submit, cannot be made to rest upon the use to which the customer puts the gas, in the one case burning it in his own ranges and stoves, and in the other case using it for the purpose of sale to consumers who use it in their stoves and ranges, or for heating or lighting their premises. The gas is, in either case, an article of interstate commerce, and if the subject transported in interstate commerce requires and admits of only regulation through a single

authority then the State cannot exercise its power in the case of sale by Appellant to consumers through its own distributing plants at the burner-tips.

This court, however, has held that the State may exercise the power of fixing reasonable rates and may prescribe other regulations affecting natural gas transported from another State by a producing company and sold to its consumers through its own distributing system at the burner-tips.

Penn. Gas Co. v. Public Service Commission,
252 U. S. 23.

The Court of Appeals of the State of New York
In Re Pennsylvania Gas Company, 122 N. E. 262, said:

"Even without any statute it (the gas company) would be under a duty to furnish gas to the public at fair and reasonable rates. The statute might be repealed and still the courts would have the power, if exorbitant charges were made, to give relief to the consumer. The State, in the adoption of this law (the commission act), has not imposed a new burden, it has not created a new duty. *It has given a new sanction to an inherent duty. It has established a new administrative agency to better ascertain and declare and enforce a duty already existing.* We cannot doubt that the creation of such an agency is within the power of the State until Congress shall manifest the purpose to override its action."

The Court of Appeals of New York, in said case, which decision was affirmed by the Supreme Court of the United States in 252 U. S. p. 23, cited above, sums up the right of the State Commission to fix rates for

the sale in New York of gas transported from the State of Pennsylvania where it was produced for sale in New York, as follows:

"We have a sale of a single commodity. We have a preexisting duty to sell it at fair rates. We have a transaction where conflicting regulations by the States are impossible, *for the public duties regulated are fulfilled in one State only.* We have a statute which declares a duty that would exist without it and establishes a new agency of government to insure obedience. The silence of Congress cannot be interpreted as a declaration that public service corporations, serving the needs of the locality, may charge anything they please. *County of Mobile v. Kimball*, 102 U. S. 691; *Covington Bridge Case*, 154 U. S. 222. The local regulation stands until Congress occupies the field."

Section 4 of Act 124 of the Legislature of Arkansas, approved February 15, 1921, amending Section 6 of Act No. 571 of the Acts of the Legislature of Arkansas of the year 1919, provides,

"Every person, firm or corporation engaged in the public service business in this State shall establish and maintain adequate and suitable facilities, safety appliances, or other suitable devices, and shall perform such services in respect thereof as shall be reasonably safe and sufficient for the security and convenience of the public and the safety and comfort of its employees, and in all respects just and fair and without any unjust discrimination or preference. All charges, tolls, fares and rates shall be just and reasonable, and no charge shall be made in any tariffs, rates, fares, tolls, schedules or classifications except as in this act herein provided" (Acts of Arkansas, 1921, p. 186.)

The regulation which the Arkansas Commission is authorized to exercise to prevent unjust discrimination and to provide rates that are just and reasonable, as above quoted, cannot be effectually exercised unless its power is exerted upon all of the business conducted by Appellant. Appellant, under the decision of the Pennsylvania Gas Company case, *supra*, is clearly subject to regulations as to its service and rates for consumers to whom it furnishes gas direct through its own distributing systems at the burner-tips, or from branch lines to the meters of industrial users. Appellant being subject to this exercise of power by the Railroad Commission, the administrative body created by the laws of Arkansas, is entitled to demand and receive rates for the public service performed that are reasonable, just and compensatory, and to have enforced such rules and regulations as will enable it to properly conduct its business.

If the Commission cannot fix the rates for gas sold by Appellant to distributing companies, as well as to its domestic consumers and large industrial users, then it cannot fix reasonable and just rates and prevent discrimination. On account of the relatively small per cent of gas supplied by Appellant direct to its consumers as compared with the large per cent delivered to the distributing companies, it would be impossible, except the rates are made so high in the towns and cities served by Appellant as to be exorbitant and unjustly discriminatory, to establish rates that would be compensatory. As appears from the evidence, the

loss by leakage under the contracts between Appellant and the distributing companies is borne entirely by Appellant. Since Appellant is required under these contracts to bear this loss, there is no incentive upon the distributing companies to keep their distribution lines in a state of good repair. For the years 1920 and 1921 this loss was enormous, and it became a direct charge against the consumers taking gas from Appellant through Appellant's distributing system.

It is no answer to this analysis of this situation to say that the State Commission may exercise its power by raising the rates of the distributing companies, thereby increasing under the percentage contracts the income of Appellant. Such exercise of the power would immediately create discrimination and the establishment of unjust and unreasonable rates that the Act vesting power in the Commission declares it shall not establish; that is, as shown in the record of this case, the rates to be fixed for the distributing companies, in order to give Appellant a proper income from the business, would be so high as to be greater than the value of the service and to destroy the distributing company's business. At the same time, if its business were not destroyed and it retained its customers, it would be giving correspondingly to the distributing companies more than a fair and just return on their investment. In other words, the consumers in the cities of Little Rock and Hot Springs would be compelled to bear more than their

just proportion of the value of the service in order to give a proper return to Appellant.

Considering Appellant's business as a public utility in its larger aspect, and referring to the power of the Commission to establish just and reasonable rates and to prevent discrimination, the only treatment that can be had of Appellant's rate situation is the fixing of rates that will afford Appellant a reasonable return on the fair value of its property used and useful in the public service as to all of the business conducted by Appellant in the State of Arkansas. This would involve the fixing of a city gate rate for gas supplied to the distributing companies and suitable rates for all other service performed by Appellant. Only in that method may unjust discrimination and unreasonable and unjust rates be avoided. Of course, this would involve adjusting the rates of the local distributing companies so as to give them a fair return based on the new condition created by changing the rates and methods of payment for gas obtained by them from appellant.

To meet local conditions the State Commission may provide rules and regulations for cutting off Appellant's supply of gas to industrial users on occasions of large peak demand of domestic consumers, thereby affording an adequate supply at proper pressure to the domestic users in the city of Little Rock. Unless the Commission may exercise this power, Appellant could continue the delivery of gas to the American Bauxite

Company and the Norton Company at Bauxite when the delivery of it would so lower the pressure as to deprive domestic consumers in the city of Little Rock of an adequate supply of gas to meet their requirements. The two petitions filed by consumers in this case, to wit, Nos. 417 and 418, which are specifically referred to in Act 443, were applications by consumers for the establishment of rules by the Railroad Commission that would compel Appellant to discontinue the supply of gas to the American Bauxite Company and other large industrial users on the occasions of extreme weather conditions creating an unusual demand for domestic gas in the city of Little Rock. This but illustrates the necessity of local action by an administrative body operating uniformly on the business of Appellant, not on one part of it only. It further demonstrates that the business requires a diversity of treatment according to the varying and changing local conditions.

Assuming that the commerce in natural gas brought from the State of Louisiana to the State of Arkansas is not national in character so as to admit and require of only one general system of regulation under a single authority, the power of the Commission to fix city border or city gate rates is unquestioned.

We have dealt at length with this phase of the regulation of Appellant's rates to emphasize that the business of Appellant as a public utility company cannot be separated into parts. So that, in one case, when

it wholesales gas to another public utility, which in turn distributes it to individual users, it is engaged in interstate commerce of a national character; while, in another case, when it delivers the gas direct to consumers through its own plant, it is likewise engaged in interstate commerce, but of a local nature that admits of regulation by the State.

THE PUBLIC DUTIES TO BE REGULATED ARE FULFILLED IN
ONE STATE ONLY. THE TRANSPORTATION OF GAS
FROM LOUISIANA BY A PUBLIC UTILITY COMPANY
FOR SALE TO DISTRIBUTING COMPANIES IN AR-
KANSAS AND TO CONSUMERS THROUGH ITS OWN DIS-
TRIBUTING SYSTEMS IN ARKANSAS IS NOT COMMERCE
OF A NATIONAL CHARACTER.

The principles relating to the division of National and State authority in the matter of regulating interstate commerce are well established by the decisions of this Court. The difficulty is in applying these principles to individual cases as they arise.

The power of Congress under the Constitution is supreme, and the State may not in any case impose a direct burden upon interstate commerce, although Congress may not have acted. The cases, dealing with the various phases of attempted direct regulation by the States of interstate commerce and of regulations by the States that affect interstate commerce only indirectly, are reviewed at length in the Minnesota Rate Case, 230 U. S. 399, and the general principle underlying all of the cases is stated as follows:

"The grant in the Constitution of its own force, that is, without action by Congress, established the essential immunity of interstate commerce intercourse from the direct control of the States with respect to those subjects embraced within the grant, which are of such a nature as to demand that, if regulated at all, their regulation should be prescribed by a single authority. It has repeatedly been declared by this Court that as to those subjects which require a general system or uniformity of regulation the power of Congress is exclusive. In other words, admitting of diversity of treatment according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting state legislation."

The Court summed up the decisions prohibiting direct action by the States affecting interstate commerce, by enumerating the following instances:

"The States cannot tax interstate commerce, either by laying the tax upon the business which constitutes such commerce, or the privilege of engaging in it, or upon the receipts, as such, derived from it; or upon persons or property in transit in interstate commerce. They have no power to prohibit interstate trade in legitimate articles of commerce; or to discriminate against the products of other States, or to exclude from the limits of the State corporations or others engaged in interstate commerce, or to fetter by conditions their right to carry it on; or to prescribe the rates to be charged for transportation from one State to another, or to subject the operations of carriers, in the course of such transportation, to requirements that are unreasonable or pass beyond the boundaries of suitable local protection."

After this summing up the court said:

"But within these limitations there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction, although interstate commerce may be affected. It extends to those matters of a local nature as to which it is impossible to derive from the constitutional grant an intention that they shall go uncontrolled pending Federal intervention."

* * * "Hence the absence of regulation by Congress in such matters has not implied that there should be no restriction, but rather that the States should continue to supply the needed rules until Congress should decide to supersede them." * * * "Our system of government is a practical adjustment by which the National authority as conferred by the Constitution is maintained in its full scope without unnecessary loss of local efficiency. *Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the State appropriately deals in making provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power.*" (Pages 402-3).

We contend, while the transaction in the instant case of sale and delivery of gas to the distributing companies in the cities of Little Rock and Hot Springs, and to the individual customers of Appellant through Appellant's own distributing systems in the various towns and communities reached by its pipe line, is interstate commerce, that the fulfillment of Appellant's obligations for the sale and delivery of the gas

in the State of Arkansas which it produces and purchases in the State of Louisiana and through its own pipe lines brings into the State in consummation of its said contracts of sale, peculiarly belongs to the class with which the State may appropriately deal in making reasonable provision for local needs.

Appellant is a public service corporation, and its rates are subject to regulation by some agency of Government. Under the Act to Regulate Commerce, as amended June 29, 1906 (chapter 3591, 34 Stat. 584), and June 18, 1910 (chapter 309, 36 Stat. 539), gas and water companies are expressly excepted from its provisions. Accordingly the police power of the States survives "though the transactions brought within its grip are those of interstate commerce."

"Matters peculiarly of local concern are not left to the unrestrained will of individuals, because Congress has not acted."

Minn. Rate Cases, 230 U. S. 402.

In the instant case, in upholding the exercise of the regulatory power by the State of Arkansas as to gas brought from the State of Louisiana and sold while it is still an article of interstate commerce, there is no room for conflict between the States of Louisiana and Arkansas, or for clash in regulations, since the public duties regulated are fulfilled in the State of Arkansas only. As said *In Re Pennsylvania Gas Company*, 122 N. E. 264:

"It is idle to speak of the need of uniformity of action by States of equal competence when there is only one State whose action is involved. But even within the State diversity rather than uniformity is exacted by conditions of the business. Rates adequate in one city are inadequate in another. The local needs are best known to local agencies of government. No central authority, acting for the nation as a whole, will readily discern them."

Port Richmond Ferry v. Hudson County, 234 U. S. 317, 332.

Wilmington Transp. Co. v. Cal. R. R. Commission, 236 U. S. 151, 154.

Transportation Co. v. Parkersburg, 107 U. S. 691, 702.

In the Port Richmond Ferry case, *supra*, the ferry company challenged the constitutionality of a resolution passed by the Board of Chosen Freeholders of the County of Hudson, New Jersey, fixing rates to be taken at the ferry by the Port Richmond Company within the county of Hudson for the transportation of foot passengers for single trips to the New York terminal as imposing a direct burden on interstate commerce. The Court, in passing on the case, said:

"It is argued that the mere fact that interstate transportation is involved is sufficient to defeat the local regulation of rates because, it is said, that it amounts to a regulation of interstate commerce, but this would not be deemed a sufficient ground for invalidating the local action without *considering the nature of the regulation and the special subject to which it relates*. Quarantine and pilotage regulations may

be said to be quite as direct in their operation, but they are not obnoxious when not in conflict with Federal rules. The fundamental test, to which we have referred, must be applied; *and the question is whether, with regard to rates, there is any inherent necessity for a single regulatory power over these numerous ferries across boundary streams; whether, in view of the character of the complaint and the validity of the regulation required, it is one which demands the exclusion of local authority.* Upon this question we can entertain no doubt. It is true that in the case of a given ferry between two States there might be a difference in the charge for ferriage from one side as compared with that of ferriage from another, but this does not alter the aspect of the subject. The question is still one with respect to a ferry which necessarily implies transportation for a short distance, almost invariably between two points only, and unrelated to other transportation. It thus presents a situation essentially local, requiring regulation according to local conditions. *It has never been supposed that because of lack of Federal action the public interest was unprotected from extortion, and that in order to secure reasonable charges in a myriad of such different local instances, exhibiting an endless variety of circumstances, it would be necessary for Congress to act directly, or to establish for that purpose a Federal agency."*

In the above case the court was dealing directly with a rate for interstate transportation, but it was transportation for a short distance and from the shore of one State across a navigable stream to the shore of another. There was necessarily a variety of local conditions in each State so that regulation by the States for the ferriage from the shores of each would more nearly meet the local requirements than if the

fixing of the rates and the regulations of service were undertaken by Congress.

How much more local in its nature are the transactions in the instant case, where there is no room for conflict of clashing authority between the States of Louisiana and Arkansas, and where, by reason of the public duties of Appellant, local regulation is needed. Natural gas is nowhere in the United States transported by common carriers and there has been no occasion for regulation by a single authority of the transportation of the gas. The sale of the commodity in interstate commerce where it is transported from one State into another involves so many varying conditions as to make appropriate local regulations rather than national, although, if national regulation was undertaken, it would override and supersede the local. But, until such national regulation is undertaken, the rates and charges of the utility delivering gas in interstate commerce would be left without regulation and to the unrestrained action of the utility company.

In the case of *Wilmington Transportation Company v. Railroad Commission of the State of Cal.*, *supra*, the transportation company was engaged as a common carrier of passengers and goods by sea between San Pedro on the mainland and Avalon on Santa Catalina Island, both places being within the county of Los Angeles, in the State of California. Merchants at Avalon, insisting that the rates charged for this transportation were unreasonable, presented their

complaint to the Railroad Commission of the State of California and asked that reasonable rates be fixed under the Public Utility Act of 1911. The transportation company challenged the authority of the Commission upon the ground that the business was subject exclusively to the regulating power of Congress. The Commission overruled the contention, and its authority to prescribe reasonable rates between these points of the State was sustained on Writ of Review by the State Supreme Court. The vessels of the transportation company in their direct passage between the ports named must traverse the high seas for upwards of twenty miles. Relying upon *Lord v. Steamship Company*, 102 U. S. 541, the transportation company contended in this Court that transportation over the high seas "is commerce with foreign nations in the constitutional sense". The court in passing upon the question thus raised said:

"But, if it be assumed for the present purpose that the power of Congress extends to the subject of this controversy, the fact remains that the power has not been exercised * * *. In this aspect, the question is whether the mere existence of the Federal power, that is, while it is dormant, precludes the exercise of State authority to prevent exorbitant charges with respect to this traffic which has its origin and destination within the limits of the State. It is understood that the fixing of the rates is a regulation of the commerce involved and hence of necessity is repugnant to the Federal authority, although the latter be unexercised. This proposition, however, as has been pointed out, is too broadly asserted if no regard be had to the dif-

ference in the subjects which, by virtue of the commerce clause, are within control of Congress". * * *

The Court having thus stated the proposition, held:

"It must be assumed upon this record that the State claims the right to exercise its authority only as to transportation between the mainland and the Island, and solely with respect to such shipments over this route as are local to the State, both as to the beginning and the end of the transportation. There is no passage through the territory of another State; the transportation, in its entire course, is subject to a single authority—either that of Congress or that of the State—and the latter would yield to the exercise of the former. The sovereignty of no other jurisdiction is encountered. It is plainly of importance to the people of the State that this local traffic should be carried upon reasonable terms; and if, in the case of a ferry, a State may protect its people from extortion although the ferriage is to the shore of another State, there is, in our judgment, no ground for saying that where the transportation is between two places in the same State it is less a subject for local action, in the absence of Federal interposition, because the voyage is over a stretch of open sea. Congress has not attempted to intervene, and we find no basis for the conclusion that the subject is one which must be deemed to be wholly free from regulation unless Congress deals with it. On the contrary, it is precisely of that local character which permits it to be left appropriately to the care of the State."

In the case of *Wabash Railway Company v. Illinois*, 118 U. S. 557, 577, the Court, after recognizing the authority of the State to prescribe intrastate rates,

held, with reference to the statute in question, which prohibited a higher rate for a short haul than a long haul within the State of Illinois, forming a part of an interstate shipment, as follows:

"But when it is attempted to apply to transportation through an entire series of States a principle of this kind, and each one of the States shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to permit it, the deleterious influence upon the transit of goods through those States cannot be overestimated. That this species of regulation is one which must be, if established at all, of a general and national character, and cannot be safely and wisely remitted to local rules and local regulations, we think is clear from what has already been said."

Commerce of a national character is that commerce that admits and requires of regulation by a single authority only. It is defined in the case of *County of Mobile v. Kimball*, 102 U. S. 691, 702, as, "intercourse and traffic", including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities. In that case the Court said,

"For the regulation of commerce as thus defined there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. Action upon it by separate States is not therefore, permissible.

Appellant is not a common carrier, and the fixing of rates for transportation of gas from one State to an-

other is not involved. Appellant's business, from the very nature of it, is affected with a public use, subjecting it to the regulatory powers of government. As the gas which it sells either to distributing companies or to its own consumers is sold in interstate commerce it is subject to National regulation, but, since Congress has not acted, *and its business is of a character that cannot go unregulated*, and the regulation of it affects only the fulfillment of obligations within the State of Arkansas, the State may regulate until Congress exerts its superior power of regulation. As stated, the variety and diversity of conditions affecting the conduct of Appellant's business makes it peculiarly subject to local regulation; therefore, there is no constitutional objection to such local regulation in the absence of action by Congress.

The rates to be charged, the regulations affecting service, are all matters of local concern at the place where the commodity is sold.

In the Pennsylvania Gas Company case, *supra*, the service to the local consumers within the City of Jamestown was identical with the service rendered by Appellant through its distributing systems to consumers in the cities and towns served by it; that is, the gas came from the State of Pennsylvania through one main line into the State of New York to the City of Jamestown, and, through the producing company's distributing system, was delivered to the local consumers. The local consumers were reached by the use of

the streets of the city in which the pipes were laid and through which the gas was conducted to factories and residences as it was required for use. This Court said:

"This local service is not of that character which requires general and uniform regulation of rates by Congressional action, and which has always been held beyond the power of the States, although Congress has not legislated upon the subject. While the manner in which the business is conducted is part of interstate commerce, *its regulation in the distribution of gas to the local consumers is required in the public interest* and has not been attempted under the superior authority of Congress."

The decision of the three judges granting Appellant's prayer for injunction as to the towns and communities served through Appellant's own distributing systems, just as the service was rendered by the Pennsylvania Gas Company in the above case, was based upon the authority of the Pennsylvania Gas Case, as we understand, and the denial of the prayer for injunction as to the Distributing Companies was based upon their interpretation of the decision in the case of *Public Utilities Commission v. Landon*, (249 U. S., 236).

The assumption that this Court has distinguished between the right of State regulation of interstate commerce as conducted in the Pennsylvania case and the interstate commerce transaction which ended in the Landon case with the delivery of the gas to the distributing companies is, we submit, without foundation.

In the Landon case this Court did not pass upon the question of the power of the State to regulate the price to be paid by the distributing companies to the producing company for the gas delivered to them at the city gates by the producing company, because that question was not involved. No application had been made by the Receivers of the Kansas Natural Gas Company for the establishment of city border rates.

In the Pennsylvania case it was not the fact that the streets of the City of Jamestown were used by the gas company, thereby creating a public obligation, that constituted its business local in its nature. We do not understand that the use of the streets had any bearing whatever upon the determination of the Court that the service was not of a character which required general and uniform regulation of rates by Congressional action. It was deemed a matter to be local in its nature because regulation of the sale of a commodity by a public utility company is required in the public interest and the matter to be regulated did not require a general or uniform system. The Court said:

"In dealing with interstate commerce it is not, in some instances, regarded as an infringement upon the authority delegated to Congress, to permit the States to pass laws indirectly affecting such commerce, *when needed to protect or regulate matters of local interest*. Such laws are operative until Congress acts under its superior authority by regulating the subject-matter for itself."

There is nothing in the business of a public utility company which sells and delivers gas to a distributing

company, the gas being brought from an adjoining State, which requires general and uniform regulation by Congressional action of the rates to be paid for the gas. The duty to be fulfilled is owing by the utility company in the State in which it delivers the gas. The regulation of the business is in the public interest, and we are unable to see any reason for a distinction between the two transactions named.

In the Landon case the receivers of the Kansas Natural Gas Company operated a system of pipe lines extending from Oklahoma to some forty terminal towns and cities in Kansas and Missouri, and produced, purchased, transported, distributed and sold natural gas to said distributing companies under divisional contract agreements. Permanent physical connections permitted gas to pass from the receivers' company's lines into the several local companies' mains. The local companies operated under special ordinances, and except "in four relatively unimportant places, the former (gas company operated by receivers) had no local franchises permitting either distribution or sale of gas, nor did it own any interest in a defendant distributing company." The receivers applied to the Public Utilities Commission of Kansas to fix rates for distributing companies that would give the receivers a compensatory return. The Public Utility Commission fixed a "28-cent schedule". The Missouri Public Service Commission suspended proposed advanced rates to the consumers. Under this state of facts the receivers began a proceeding against

the Kansas Public Utility Commission, the Missouri Public Service Commission, 32 local distributing companies and 47 cities and towns in those States, to enjoin the enforcement of the "28-cent schedule" as being non-compensatory and confiscatory of the estate and property in the receivers' hands. The Court below held that:

"The business carried on by the receivers—transportation of natural gas and its disposition and sale to consumers through the distributing companies—was interstate commerce of a national character; that the Commission's action interfered with the establishment and maintenance of reasonable selling rates and thereby burdened interstate commerce and took the receivers' property without due process of law".

It accordingly enjoined the Commissions and the various municipalities and distributing companies from interfering with the establishment of such reasonable and compensatory rates as the court might approve.

Upon this state of facts, this Court held that the interstate movement ended with the delivery of the gas by the receivers into the distributing systems of the distributing companies, and that the distribution and sale of gas by the distributing companies constituted a transaction in intrastate commerce and had but an indirect effect upon interstate commerce. That this is all that was decided in the case appears from the review of the decision made by this court in the Pennsylvania Gas case in which this Court said:

"This case differs from *Public Utilities Commission v. Landon* (249 U. S., 236) wherein we dealt with the piping of natural gas from one State to another and its sale to independent local gas companies in the receiving State, and held that the retailing of gas by the local companies to their consumers was intrastate commerce and not a continuation of the interstate commerce, although the mains of the local companies receiving and distributing the gas to local consumers were connected permanently with those of the transmitting company. *Under the circumstances set forth in that case, we held that the interstate movement ended when the gas passed into the local mains; that the rates to be charged by the local companies had but an indirect effect upon interstate commerce, and therefore, the matter was subject to local regulations.*"

This Court in the Landon case said:

"The Court below erroneously adopted the contrary view (the view that the distributing companies acted as agents for the transmitting company and that the interstate movement was not completed until the gas was delivered to the ultimate consumers) and upon it rested the conclusion that the public commissions had interfered with the establishment of compensatory rates by the receivers, in violation of their rights under the Fourteenth Amendment. * * * Our conclusion concerning the relationship between the receivers and the local companies renders it unnecessary to discuss the effect of the rates prescribed for the latter. The receivers were in no position to complain of them."

The misconception as to the effect of the decision in the Landon case evidently rests upon the following language used by Mr. Justice McReynolds in delivering the opinion of the Court, namely:

"That the transportation of gas through pipe lines from one State to another is interstate commerce may not be doubted. Also, it is clear that as part of such commerce the receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interference by the State. *Adams Express Company v. Iowa*, 196 U. S., 133, 144; *Oklahoma v. Kansas Natural Gas Company*, 221 U. S., 229; *Haskell v. Kansas Natural Gas Company*, 224 U. S. 217."

As before stated, the question of the power of the Public Commissions of the States of Kansas and Missouri to fix rates for gas delivered to distributing companies at the city gates was not involved in the Landon case. The receivers had the conception that interstate commerce in the gas continued until the gas was sold by the distributing companies to the ultimate consumer; therefore, they asked relief against the rates fixed by the Public Commission to be charged the consumers by the distributing companies. So, this Court was not called upon to determine whether the sale of gas to distributing companies in Kansas and Missouri, transported from Oklahoma, was commerce of a national character admitting and requiring general and uniform regulation by a single authority.

The cases cited to support the statement "that the receivers might sell and deliver gas so transported in interstate commerce to distributing companies *free from unreasonable interference by the State*," indicate that this court considered the question of commerce in its general aspect and not with respect to whether the State might exercise its power of regu-

lation by reason of the local character of the transaction and the necessity for regulation in protection of the public interests.

The commerce dealt with in the Adams Express Company case was clearly of a national character. It was an article transported by a public carrier and, as other commodities of merchandise, moving from State to State, not affected by a public use, was free from any State interference.

The case of *Oklahoma v. Kansas Natural Gas Company*, *supra*, dealt with an entirely different condition. In that case this court held that a statute of Oklahoma prohibiting foreign corporations from building pipe lines across highways of the State and transporting natural gas therein to points outside the State is unconstitutional as an interference with and restraint upon interstate commerce.

In the Haskell case the court held that a decree declaring a State statute unconstitutional so far as it prohibits, or is a burden upon interstate commerce, will not be construed as preventing the enforcement of such legislation as is legitimate within the police power of the State, and not in conflict with the Federal Constitution.

Neither of the Oklahoma cases dealt with the question as to whether commerce between the States in natural gas was of such a character as to be free from State regulation in the absence of action by Con-

gress. In the Oklahoma cases it was not simply a burden that was placed by the State statute upon interstate commerce, but by it commerce between States in natural gas and oil produced in Oklahoma was prohibited, and it was in that sense evidently that the language was used in the Landon case that the receivers might sell and deliver gas to local distributing companies "free from unreasonable interference by the State."

The question was not involved in the Landon case whether, if the receivers were engaged in the local business of distributing gas as well as the wholesaling of it to distributing companies, the conduct of such local business would affect the entire business of the receivers with a public use so as to make regulations of necessity local in their nature. But, it is significant that Mr. Justice McReynolds, in stating the facts, adverted to the fact that the gas company "except in four relatively unimportant places, had no local franchises permitting either distribution or sale of gas, nor did it own any interest in a defendant distributing company."

In the instant case it appears that appellant had franchises in fifteen or more cities and towns in which it distributed gas, and that in 1921 it obtained an Indeterminate Permit from the Corporation Commission of Arkansas authorizing it to conduct its business as a public utility company, thereby impressing its entire business with a public interest.

The Honorable John C. Pollock, U. S. District Judge for the District Court of Kansas, one of the three judges who heard appellant's application for temporary injunction, on June 15, 1922, filed an opinion in the case of *Central Trust Company of New York v. Consumers' Light, Heat & Power Company* (282 Fed. 680), in which he held that a State public utility commission cannot regulate the price chargeable local distributing companies for gas by one transporting the gas in interstate commerce by pipe lines, *and exercising no franchise rights acquired from the State*, though Congress had not exercised its power of control over such rates. District Judge Pollock's decision in said case was based upon his interpretation of the decision of this court in the Landon case, and presumably reflect his views in denying Appellant's application for an injunction against the distributing companies.

Judge Pollock took the view in the Central Trust Case that the commerce in the natural gas transported from Oklahoma and delivered to the distributing companies at the city gates was of a national character and subject only to regulation by Congress. But in so holding, he emphasized that the transporting company was engaged in no local business under franchises obtained from local communities. In that connection he said:

"The Natural Company owns and exercises no franchise rights in this State, acquired from the State or any of its municipal bodies. It is a foreign corpor-

ation, owning a pipe line system, and is producing or purchasing natural gas in Oklahoma, this State, and transporting it from Oklahoma, into and through this State, into the State of Missouri, and delivering the same to some forty odd local gas companies holding franchises from the several cities in which they are located for the distribution and sale of natural gas therein. *In the transaction of its business the Natural Company is engaged solely and alone in interstate commerce business within this State, and does no local business whatever. This is conceded.*"

It is apparent from this excerpt that if Judge Pollock had found that the Gas Company was affected with a public use imposing upon it a corresponding public duty, that he would have held its business in wholesaling gas to distributing companies, as well as its business of distributing the gas in local communities, to have been as a whole local in its nature and subject to local regulations in the absence of Congressional action.

On June 30, 1922, the District Court of Missouri, through Van Valkenburg, District Judge, in the case of *State of Misouri v. Kansas Natural Gas Company* (282 Fed. 341), handed down an opinion in a proceeding in Missouri involving the same question as was involved in the Central Trust Company case, holding, as did Judge Pollock in the Central Trust Case, that the commerce in natural gas transported from Oklahoma and delivered to distributing companies in another State was national in its character. His decision, like Judge Pollock's, was based on the Landon case.

The Kansas Supreme Court, on July 8, 1922, in the case of *State v. Kansas Natural Gas Company*, rendered a decision holding that the Public Utilities Commission of Kansas could exercise the power of regulation of rates for gas sold in interstate commerce to the distributing companies. (*State Ex Rel Helm v. Kansas Natural Gas Company*, 208 Pac. 622.) The Court in its opinion in the above case said:

"Attention is directed to an opinion of the Honorable John C. Pollock, Judge of the U. S. District Court for the District of Kansas, in *Central Trust Company of New York v. Consumers' Light, Heat & Power Company*, 282 Fed. 680, in which that court held that the business of the Kansas Natural Gas Company in selling gas to the several distributing companies within the State of Kansas is interstate commerce and is not subject to the control of the State through the Public Utility Commission. That opinion is wholly based on *Public Utility Commission v. Landon*, 249 U. S. 236; *Penn. Gas Co. v. Public Service Com.*, 252 U. S. 23.

"This court reaches a conclusion different from that of the U. S. District Court, based on the same cases and on the fact that Congress has not attempted to regulate the sale of natural gas, and that the regulation of its sale is necessary and cannot be uniform or national in its character. Until Congress does act in the matter, the State has power to regulate the sale of natural gas in this State by the Kansas Natural Gas Company."

We submit that the above decisions by the District Courts of Kansas and Missouri in holding that interstate commerce in natural gas brought from Okla-

homa and delivered to the distributing companies in Kansas in the one case, or in Missouri in the other, is national in character, have proceeded upon a false premise as to the holding of this Court in the Landon case; that it is a false assumption that the business of the Kansas Natural Gas Company, in the cases stated, is not affected by a public use and therefore not necessarily subject to public regulation, because it does not retail its gas and only sells it at wholesale to other companies, who in turn retail it.

If the Kansas Natural Gas Company is left free to fix its own price for gas sold to distributing companies which is by them in turn distributed to the public, and upon which the public is dependent for necessary public service having once connected with the mains of the distributing companies, then police regulation by the State of the price to be charged by the distributing companies is wholly inadequate to prevent extortionate rates and charges. The producing company may charge an unreasonable price for the gas, receive an unreasonable return on the value of its property used in producing and transporting the gas, which commodity is used in the public service, it may have arrangements with the distributing companies for rebates, and engage in other practices that result in unreasonable and unjust rates being

charged the ultimate consumer. The very statement of the discriminatory conditions that may arise shows that the sale of the commodity in interstate commerce requires regulation. Is it to be unregulated simply because Congress has not acted? Will not commerce in natural gas between Oklahoma and Kansas, between Oklahoma and Missouri, or between Louisiana and Arkansas, by reason of the local needs of regulation, be treated as falling within the principle laid down by Mr. Justice Hughes, in the Minnesota Rate cases, authorizing State regulation rather than leaving it to the unrestrained will of individuals, to-wit:

“Our system of Government is a practical adjustment by which the National authority as conferred by the Constitution is maintained in its full scope *without unnecessary loss of local efficiency*. Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the State appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power.”

We respectfully submit that the order of the three judges declining to grant a temporary injunction against the Little Rock Gas & Fuel Company and the Consumers' Gas Company should be reversed

and the cause remanded, with direction to enter an appropriate order permitting Appellant to establish city gate rates for gas served to said distributing companies, and with directions to renew and extend the injunction granted against the Railroad Commission and the several towns and municipalities served by Appellant direct.

J. M. MOORE,

W. B. SMITH,

Attorneys for Appellant.

JOHN S. WELLER,

JOHN O. WICKS,

J. MERRICK MOORE,

H. M. TRIEBER,

Of Counsel.

(29050)

No. 500

Office of Supreme Court

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WM. R. STANSE

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1922.

ARKANSAS NATURAL GAS COMPANY,
Appellant,

v.s.

ARKANSAS RAILROAD COMMISSION, CITY
OF PINE BLUFF, TOWN OF SHERIDAN,
TOWN OF ALEXANDER, CITY OF BEN-
TON, TOWN OF HASKELL, CITY OF MAL-
VERN, CITY OF ARKADELPHIA, TOWN
OF GURDON, CITY OF PRESCOTT, TOWN
OF EMMETT, CITY OF HOPE, TOWN OF
GARLAND, TOWN OF FOKE, TOWN OF
TRACKWOOD,

and

Defendants,

LITTLE ROCK GAS & FUEL COMPANY and
CONSUMERS' GAS COMPANY,
Defendants-Appellees.

On appeal under
Judicial Code
§266 from order
of District Court
for the Western
Division of the
Eastern District
of Arkansas.

Honorable
Kimbrough Stone,
Circuit Judge.

Honorables
John C. Pollock
and
Jacob Trieber,
District Judges.

STATEMENT, BRIEF AND ARGUMENT FOR APPELLEES.

ASHLEY COCKRILL,
HENRY M. ARMISTEAD,

Solicitors for Appellee, Little Rock Gas & Fuel
Company.

MAX PAM,
HARRY BOYD HURD,
ASHLEY COCKRILL,
Of Counsel,

WILLIAM H. MARTIN,

Solicitor for Appellee, Consumers' Gas Company.

LEWIS L. DELAFIELD,
E. J. DIMOCK,
Of Counsel.

INDEX.

	PAGE
STATEMENT OF CASE	2
BRIEF	10
ARGUMENT	18
1. The bill was premature	18
2. Comity demands Federal Court wait	33
3. Rates between two public utilities not subject to be regulated	34
4. Regulation of rates of distributing company not within power of State	61
5. Act 443 prohibits Commission from abrogating existing con- tracts	69
6. If that part of Act 443 is unconstitutional whole act falls...	80
7. District Court did not abuse discretion in refusing inter- locutory injunction	88

LIST OF CASES.

Allen v. Railroad Commission, 179 Cal. 68.....	49
American Surety Co. v. Shellenberger, 183 Fed. 636.....	83
Arkansas Natural Gas Co., v. Consumers Gas Co., 264 Fed. 804..	5
Bacon v. Rutland R. R. Co., 232 U. S. 134	19, 24
Bartee Tie Company v. Jackson, 281 Ill. 452.....	45
Board v. Offenhauser, 84 Ark. 257	30
Board v. Pollard, 98 Ark. 543	29
Boston & M. R. R. v. Niles, 218 Fed. 944.....	34
Brown v. Turner, 70 N. C. 93	27
Camden v. Arkansas Lt. & Power Co., 145 Ark. 205	9
Central Trust Co. v. Consumers Light, Heat & Power Co. 282 Fed. 680	66
Chapman & Dewey L. Co. v. Road Imp. Dist., 127 Ark. 318.....	31
Chicago, M. & St. P. Ry. Co. v. City, 238 Fed. 364	83

	PAGE
Citizens Passenger Railway Co. v. Public Service Commission, 271 Pa. St. 39	41, 53
Clear Creek Oil & Gas Co. v. Ft. Smith Spelter Co., 148 Ark. 260, 9, 23, 54	
Columbus Ry. Power & Light Co. v. City of Columbus, 249 U. S. 399	91
Connolly v. Union Sewer Pipe Co., 184 U. S. 540.....	81, 83
12 Corpus Juris Sec. 222, p. 794.....	70
12 Corpus Juris Sec. 235, p. 803	27
12 Corpus Juris Sec. 220, p. 787	71
Dawson v. Kentucky Distilleries & Warehouse Co. 255 U. S. 238...	92
Ex Parte Deeds, 75 Ark. 542	83
Detroit & Mackinac Ry. v. Mich. R. R. Comm., 235 U. S. 402....	20, 24
Devine v. Brunswick-Balke Collender Co., 270 Ill. 504	28
Farmers, etc. v. Dobney, 189 U. S. 301.....	77
Fidelity Mutual Insurance Co. v. Mettler, 185 U. S. 308.....	77
German Alliance Insurance Co. v. Lewis, 233 U. S. 389.....	59, 76
Grassy Slough Drainage District v. National Box Co., 111 Ark. 144	31
Heisler v. Colliery Co. ... U. S. ..., 43 Sup. Ct. 83	77
Hovey v. State, 119 Ind. 395.....	28
Jacobs v. City, 131 Ark. 28	30
Janvrin, et al. v. Revere Water Co., 174 Mass. 514.....	24
Jones v. Cooper, ... Ark. ..., 242 S. W. 550	88
Kansas City Bolt & Nut Co. v. Kansas City Light & Power Co. 275 Mo. 529	9
Kirst v. Street Improvement Dist. 86 Ark. 1	30
Re: Koochiching County Taxes, 146 Minn. 87	25
Kryptok Co. v. Stead Lens Co., 190 Fed. 767.....	93
Landon v. Court of Industrial Relations, 269 Fed. 432.....	76
Lonoke v. Bransford, 141 Ark. 18	91
Louisville & Nashville Railroad Co. v. Garrett, 231 U. S. 298.....	33
Marin Water & Power Co. v. Town of Sausalito, 168 Cal. 587....	51
Mellon Co. v. McCafferty, 239 U. S. 134	19
Missouri v. Kansas Natural Gas Co., 282 Fed. 341	66
Minnesota Rate Cases, 230 U. S. 352	62
Mo. Pac. R. R. Co. v. Highway Imp. Dist., 143 Ark. 261.....	29

	PAGE
Monette Road Imp. Dist. v. Dudley, 144 Ark. 169.....	30
Nettles v. Hazelwood Road Imp. Dist., 144 Ark. 632.....	30
Newell v. Redondo Water Co. ... Cal. App. ..., 202 Pac. 914.....	51
Nowata County Gas Company v. Henry Oil Co., 269 Fed. 742.....	52
Oklahoma Gas & Electric Co. v. Oklahoma Natural Gas Co., ... Oklahoma. ..., 205 Pac. 768	55
Oklahoma Natural Gas Co. v. Corporation Commission, ... Okla. ..., 211 Pac. 401	56
Oregon R. & Navigation Co. v. Campbell, 173 Fed. 957 affirmed, 230 U. S. 525	27
Pennsylvania Gas Co. v. Public Service Commission, 252 U. S. 23..63,68	
Piedmont Power & Light Co. v. L. Banks Holt Mfg. Co., 183 N. C. 327	9
Pollock v. Farmers Loan & Trust Co., 158 U. S. 601	81
Pope v. City, 131 Ark. 429	30
Port Richmond Ferry v. Hudson Co., 234 U. S. 317.....	67
Prentis v. Atlantic Coast Line, 211 U. S. 210	18, 24, 34
Public Utilities Commission of Kansas v. Landon, 249 U. S. 236... .	62
Railroad & Warehouse Commission v. Litchfield and Madison Rail- way Company, 267 Ill. 337	47
6 Ruling Case Law, Sec. 77, p. 78	70
14 Ruling Case Law, 312	92
25 Ruling Case Law, Sec. 243, p. 1000	70
Russell v. Farley, 105 U. S. 433	93
Rutland Ry. Lt. & Power Co. v. Burdett Bros., 94 Vt. 421	9
Southern Iowa Electricity Co. v. City of Chariton, 255 U. S. 539... .	91
Sprague v. Thompson, 118 U. S. 90	83
St. Joseph Gas Company v. Barker, 243 Fed. 206	41
St. Louis S. W. R. Co. v. Arkansas, 235 U. S. 350	33, 70
St. L. S. W. Ry. Co. v. Stewart, 150 Ark. 586	23
St. Louis, Iron Mountain & Southern Ry. Co. v. State of Arkansas, 240 U. S. 518	77
State v. Crosby, 92 Minn. 176	25
State v. Duval County, 76 Fla. 180	26
State ex rel. Helm v. Kansas Natural Gas Co. ... Kan. ..., 208 Pac. 622	66

	PAGE
State Public Utilities Commission v. Bethany Mutual Telephone Association, 270 Ill. 183	45
State Public Utilities Commission v. Monarch Refrigerating Co., 267 Ill. 528	46
State v. Gantz, 124 La. 535	82
State v. Public Service Commission, 275 Mo. 483	44
State v. Spokane & Inland Empire R. R. Co., 89 Wash. 599	42
State v. State Public Service Commission, 94 Wash. 274	27
Stoehr v. Natatorium Co., 34 Ida. 217	51
Story v. Richardson, 186 Cal. 162	51
Stratton v. Railroad Commission, 186 Cal. 119	51
Sunset Shingle Co. v. Northwest Electric & Water Works, 118 Wash. 416	47
Taylor v. Place, 4 R. I. 324	28
Town of Pocohontas v. Central Power & Light Co., ... Ark. ..., 239 S. W. 1	91
Transportation Co. v. Parkersburg, 107 U. S. 691.....	67, 68
Trenton, etc. v. Board, 229 Fed. 140	92
Union County National Bank v. Ozon Lumber Co., 127 Fed. 206...	83
United Dry Goods Co. v. Ga. Public Service Co., 248 U. S. 372....	9
United Fuel Gas Co. v. Hallanan, 257 U. S. 277	63
Van Buren Water Co. v. Van Buren, 152 Ark. 83	23
Waters v. Whitcomb, 131 Ark. 28	30
Wilmington Transportation Co. v. California Railroad Commission, 236 U. S. 151	67

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1922.

ARKANSAS NATURAL GAS COMPANY,
Appellant,
vs.

ARKANSAS RAILROAD COMMISSION,
CITY OF PINE BLUFF, TOWN OF SHERIDAN,
TOWN OF ALEXANDER, CITY
OF BENTON, TOWN OF HASKELL,
CITY OF MALVERN, CITY OF ARKADELPHIA,
TOWN OF GURDON, CITY
OF PRESCOTT, TOWN OF EMMETT,
CITY OF HOPE, TOWN OF GARLAND,
TOWN OF FOKE, TOWN OF TRACKWOOD,

and Defendants.

LITTLE ROCK GAS & FUEL COMPANY
and CONSUMERS' GAS COMPANY,
Defendants-Appellees.

On appeal under
Judicial Code
§266 from order
of District Court
for the Western
Division of the
Eastern District
of Arkansas.

Honorable
Kimbrough Stone,
Circuit Judge.

Honorables
John C. Pollock
and
Jacob Trieber,
District Judges.

STATEMENT, BRIEF AND ARGUMENT
FOR APPELLEES.

The positions of appellees Little Rock Gas & Fuel Company and Consumers' Gas Company are so similar upon this appeal that their counsel have prepared this joint brief, statement and argument intended to cover all points which they have in common, leaving any points which involve but one of them for treatment in separate pamphlets.

STATEMENT OF THE CASE.

The statement made by appellant, in this case, we cannot accept for the reason, as we believe, that the facts are not fully and accurately set forth.

This is an appeal from an order of the District Court which granted an interlocutory injunction under Section 266 of the Judicial Code against the Railroad Commission of Arkansas and certain other defendants, consisting of the various municipalities served directly by appellant, and denied the injunction against the remaining defendants, the Little Rock Gas & Fuel Company (successor to Pulaski Gas Light Company), which is a distributing company receiving gas at the city border from appellant and distributing it within the limits of the city of Little Rock, and the Consumers Gas Company (successor of Hot Springs Gas Company), which is a distributing company receiving gas at the limits of the city of Hot Springs, and distributing it within that city. The order enjoined the Arkansas Railroad Commission and the various municipalities served directly by appellant from enforcing existing gas rates and from interfering with appellant in its right to establish other higher and different rates for gas supplied to its patrons in the several municipalities served directly by it. The order permitted appellant to put into effect its own schedule of rates as it saw fit in the municipalities and communities served directly by it, reserving, however, the right of defendants to complain to the court if the schedules of rates put into effect by appellant were regarded as unjust or unfair.

The application for the interlocutory injunction against the two distributing companies was denied. No reasons

or grounds were set out upon which the Court based its action (Rec. 99). This appeal attempts to reverse that part of the order denying the injunction against the distributing companies.

Appellant alleges in its bill that the Commission declined its application for city gate rates in Little Rock and Hot Springs served by the distributing companies, on the ground that the Commission had no power to change or impair existing contracts between appellant and each of the distributing companies. The contracts of the two distributing companies involved in this case provided for a division of collections from consumers on a percentage basis, and thus prevented the imposition of city gate rates. The contention of appellant is that that part of Act 443, Arkansas Legislature of 1921, imposing a limitation upon the power and authority of the Commission in withholding from it the power to ignore existing contracts, was void for discrimination and in violation of the 14th Amendment of the Constitution of the United States.

The only issue before this Court is the correctness and propriety of the action of the District Court in declining to issue an interlocutory injunction against the distributing companies, and the only basis of the attack of appellant is the alleged unconstitutionality of that part of Act 443 referred to.

Appellant's bill also alleged that the contracts between it and two distributing companies was terminated by virtue of the notice given by appellant to the distributing companies, on the theory that these contracts were based on a source of supply of gas from the Caddo fields, which fields had, so appellant alleges, failed many years before. No proof was taken on that issue and that question is not urged by appellant before this Court.

Counsel for appellant in their statement of the case attack the policy and wisdom of percentage contracts with distributing companies, because among other things, it is said that under those contracts there is no incentive resting upon the distributing companies to keep their plants in good repair, since the loss by leakage is all borne by the producer. Counsel state in their statement of the case that the loss through leakage in the Little Rock plant is fifteen times good practice, and that the loss in the Hot Springs plant by leakage is considerably more than good practice. This leakage question is not an issue in this case and reference to the claims about it has no place in the statement of facts. In view of that statement, however, it is only fair to the distributing companies to say that Mr. Kramer, chief engineer of appellant, on cross examination stated that what is meant by leakage is unaccounted for gas, that is, the difference between the volume of gas that the meters of the Arkansas Natural Gas Company show were delivered in the city gate lines and the gas accounted for according to the meters of the consumers of the distributing companies. He admitted that a gas company that has a leakage of eight or ten per cent of its sales is fairly good practice, so that according to Mr. Kramer, the unaccounted for gas by the Little Rock Gas & Fuel Company amounts to about two times good practice, and of the Consumers Gas Company very much less. Mr. Kramer also developed in his cross examination that the gas was measured at the city gates by an orifice meter from which by a series of calculations the amount of gas passing through the orifice meter is measured, and that the Little Rock Gas & Fuel Company had no such meter nor any meter at the city gate, and no means of knowing the amount of leakage except from information it gets from the Arkansas Natural Gas Company. The same thing is true as to the Consumers Gas Company at Hot Springs.

He also admitted that the attention of the Little Rock Gas & Fuel Company was never called to the amount of leakage in its system prior to the hearing before the Commission, and that the Little Rock Gas & Fuel Company was making every effort to decrease its leakage. (Rec. 134.)

It was also developed in the proof that the contracts between appellant and the distributing companies contained provisions protecting the distributing companies from all loss on account of abnormal leakage.

Because it has developed that percentage contracts are unfair to pipe line companies, it does not follow that under the law the commission or courts are clothed with power and authority to set them aside. These contracts were deliberately entered into many years before the establishment of the commission, and no suggestion of city gate rates was ever made until a few days before the application for city gate rates was filed with the Commission by appellant. While the cases in the courts show that percentage contracts have been set aside by receivers of pipe line companies, who were not bound by contracts unless ratified by the receivers pursuant to appropriate orders of the Court, and by some courts because particular contracts lacked mutuality, (which is not the case with the contracts involved herein), no court has ever held that these contracts can be set aside as opposed to public policy. On the contrary, the Hot Springs percentage contract involved in this case was upheld by the Eighth Circuit Court of Appeals in *Arkansas Natural Gas Co. v. Consumers' Gas Co.*, 264 Fed. 804, in which case the Court said that courts could not make new contracts for litigants nor relieve them from the legal effects of their own improvident undertakings.

The record in this case develops that the Arkansas Natural Gas Company owned leases in Caddo Parish,

Louisiana, and in Texas, and needed a market for that gas. Little Rock was its goal. The Pulaski Gas Light Company (now Little Rock Gas & Fuel Company) owned and operated an artificial gas plant in Little Rock, and the Hot Springs Gas Company (now Consumers' Gas Co.) owned and operated a similar plant in Hot Springs. The Arkansas Natural Gas Company on December 8, 1909, made a preliminary agreement with the Pulaski Gas Light Company to construct a pipe line from its gas fields in Louisiana to Little Rock, in consideration that the Pulaski Gas Light Company would abandon its artificial plant and conform its distributing system to the distribution of natural gas, and make a contract to distribute natural gas bought exclusively from the Arkansas Natural Gas Company. The compensation was fixed at a percentage of the proceeds collected by the Pulaski Gas Light Company. Subsequently supplemental contracts were made between the pipe line and distributing companies, and in 1910 a franchise was granted by the City of Little Rock to the Pulaski Gas Light Company running until 1940, allowing a maximum rate of 50 cents per thousand cubie feet. On February 16, 1910, a permanent contract was made between the Arkansas Natural Gas Company and the Pulaski Gas Light Company along the lines of the preliminary agreement, running until 1940. Afterwards supplemental agreements were made between the two companies. As soon as permitted by these agreements the Arkansas Natural Gas Company raised its rates to its own consumers and made demands of Little Rock Gas & Fuel Company for similar rates, which were complied with, resulting in increases under the terms of the contracts by Little Rock Gas & Fuel Co. as against its own consumers on July 6, 1916, January 1, 1918, August 1, 1918, and January 1 and September 2, 1920. Each of these increases was made in

response to demands made by the Arkansas Natural Gas Company under the terms of the contract between them, which provided in effect that whenever the Arkansas Natural Gas Company was dissatisfied with the rates charged by the Little Rock Gas & Fuel Company to its own consumers it might terminate the agreement upon six months' notice, unless the Pulaski Gas & Light Company restored the division of proceeds collected based upon *the maximum rate of 50 cents per thousand cubic feet, or such other rates as might otherwise be agreed upon.* (Rec. 52.)

Under that provision it was and always has been within the power of the Arkansas Natural Gas Company to demand increases in rates to be collected by the Little Rock Gas & Fuel Co., up to fifty cents a thousand cubic feet.

The contract between the Hot Springs Gas Company (now Consumers Gas Co.) and appellant was made January 30, 1911, and runs for twenty years. It is a percentage contract in the main similar to the Little Rock contract. (Rec. 53.)

In December, 1920, the Arkansas Natural Gas Company served notices on each of the distributing companies that the contracts were at an end, and that it would file a schedule, placing the distributing companies on city gate rates, which means that the distributing companies pay for all leakage occurring in their lines. Under the existing contracts that leakage is the loss of appellant, but that fact was considered when the division of proceeds was agreed upon. A few days thereafter appellant made application to the Commission for a schedule of rates. That was the beginning of this litigation.

The Commission refused appellant's application for an increase in rates to its own consumers and for city gate rates as to the distributing companies. Appellant ap-

pealed to the Circuit Court of the State from the order of the Commission refusing its application, and in accordance with the proceedings laid down in the Act under which the Commission was acting, perfected its appeal, lodged its transcript in the State Circuit Court, filed and submitted a motion for a temporary restraining order, and had the case set down for hearing. Before the hearing on the appeal was submitted to the Circuit Court appellant took a non-suit, and filed this bill. Appellant made defendants in its bill the Arkansas Railroad Commission, various towns which it served direct at the burner tips, and the two distributing companies. Appellant pleaded that the rates in force were confiscatory, that that part of the Act under which the Commission was prohibited from ignoring existing contracts was unconstitutional and void, and that it was the duty of the Commission to ignore the two existing percentage contracts with appellees, and fix city gate rates. The bill also alleged that these contracts had terminated. These facts are alleged in the bill.

A hearing on an application for an interlocutory injunction was had before three judges under Section 266 of the Judicial Code, but no proof was taken on the question as to the termination of the contracts, and that question is not raised. The District Court (three judges) granted the injunction as against all defendants, except the two distributing companies, and denied it as to them. The order of injunction permitted appellant to fix its own schedule of rates as against its own direct consumers. Appellant appealed direct to this Court.

While no claim of invalidity of the contracts is made by appellant, it will tend to a clear understanding of the questions here discussed to bear in mind the fact that the rate contracts with which we are here concerned are valid and subsisting. The machinery of the successive Arkan-

sas Public Utility Acts (No. 571 of 1919 and No. 124 of 1921) involves a recognition of all existing rates and contracts (even if the contracts are of such a character that they may be abrogated by the Commission), until changed by the Commission. In this respect Arkansas adopts the general rule of the continued existence of public utility contracts until changed by the regulatory body. (*Piedmont Power & Light Co. v. L. Banks Holt Mfg. Co.*, 183 N. C. 327; *Rutland Ry. Lt. & Power Co. v. Burdett Bros.*, 94 Vt. 421; *Clear Creek Oil & Gas Co. v. Ft. Smith Spelter Co.*, 148 Ark. 260; *Camden v. Arkansas Lt. & Power Co.*, 145 Ark. 205; *United Dry Goods Co. v. Ga. Pub. Service Corp.*, 248 U. S. 372; *Kansas City Bolt & Nut Co. v. Kansas City Light & Power Co.*, 275 Mo. 529.)

The contracts here involved have hence never been modified by any regulatory body.

BRIEF.

The Arkansas Natural Gas Company, a company producing gas in Louisiana, serves the Little Rock Gas & Fuel Company, and the Consumers Gas Company, gas distributors, under contracts by virtue of which the producer receives a percentage of the rates collected from the public of the cities of Little Rock, Ark., and Hot Springs, Ark., respectively.

The Arkansas Natural Gas Company sought to induce the Commission in Arkansas to abrogate the existing divisional rate contracts, and to substitute new, fixed, city gate rates.

The Arkansas Railroad Commission refused to interfere with the existing contract rates between the producing company on the one hand and the distributing companies on the other, or to permit the proposed new rates, holding that Act 443 of 1921 deprived it of power to abrogate contracts.

The Arkansas Natural Gas Company, instead of pursuing the remedy of appeal through the state courts, alleged that Act 443 was in violation of the Constitution of the United States, and sought an injunction in this proceeding in the United States Court, to restrain the Commission and the distributing companies from enforcing the contract rates or interfering with the proposed rates. A motion for an interlocutory injunction was filed and a hearing had in the District Court before three judges. The motion was denied, and the Arkansas Natural Gas Company brings this appeal.

The court below simply refused to act; and appellees need justify its non-action on but one ground, if the order

is to be affirmed. On the other hand, the appellant must establish the existence of all of the requisites for action by the court below, if the order is to be reversed.

It is now conceded on all hands, for the purposes of this proceeding, that the contracts are and will be in full force and effect unless and until abrogated in this proceeding. The question is: "Should the contracts have been temporarily abrogated pending the final hearing of this suit?"

Appellant and Little Rock Gas & Fuel Co. are both corporations of Delaware, and the District Court had no jurisdiction over said Little Rock Company on the ground of diversity of citizenship (Rec. 83, 90).

I.

This bill was premature, because the appellant had not pursued its appeal through the state courts, and the action of the Commission had not become final, under the rule of law established in *Prentis v. Atlantic Coast Line* (211 U. S. 210) and cases following it.

Prentis v. Atlantic Coast Line, 211 U. S. 210.
Mellon Co. v. McCafferty, 239 U. S. 134.
Bacon v. Rutland R. R. Co., 232 U. S. 134.
Detroit & Mackinac Ry. v. Mich. R. R. Comm.,
 235 U. S. 402.

Van Buren Water Co. v. Van Buren, 152 Ark. 83.
Clear Creek Co. v. Spelter Co., 148 Ark. 260.
Jones v. Cooper, . . . Ark. . . ., 242 S. W. 550.
St. L. S. W. Ry. Co. v. Stewart, 150 Ark. 586.
Janvrin et al. v. Revere Water Co., 174 Mass.
 514.

State v. Crosby, 92 Minn. 176.
Re Koochiching County Taxes, 146 Minn. 87.
State v. Duval County, 76 Fla. 180.
12 Corpus Juris, Sec. 235, page 803.

- Oregon R. & Navigation Co. v. Campbell*, 173 Fed. 957, affirmed in 230 U. S. 525.
- State v. State Public Service Commission*, 94 Wash. 274.
- Brown v. Turner*, 70 N. C. 93.
- Taylor v. Place*, 4 R. I. 324.
- Hovey v. State*, 119 Ind. 395.
- Devine v. Brunswick-Balke-Collender Co.*, 270 Ill. 504.
- Mo. Pac. R. R. Co. v. Highway Improvement Dist.*, 143 Ark. 261.
- Board v. Pollard*, 98 Ark. 543.
- Kirst v. Street Improvement Dist.*, 86 Ark. 1.
- Board v. Offenhauser*, 84 Ark. 257.
- Monette Road Impr. Dist. v. Dudley*, 144 Ark. 169.
- Nettles v. Hazelwood Road Imp. Dist.*, 144 Ark. 632.
- Pope v. City*, 131 Ark. 429.
- Waters v. Whitcomb*, 131 Ark. 28.
- Jacobs v. City*, 131 Ark. 28.
- Chapman & Dewey L. Co. v. Road Imp. Dist.*, 127 Ark. 318.
- Grassy Slough Drainage District v. National Box Co.*, 111 Ark. 144.

II.

Even though the legislative act had become final, so the bill was not premature on that ground, still the rule of comity demands that consideration of the constitutionality of Act 443 wait until that question has been passed upon by the Arkansas Supreme Court.

St. Louis S. W. R. Co. v. Arkansas, 235 U. S. 350.

Louisville & Nashville Railroad Co. v. Garrett,
231 U. S. 298.

Boston & M. R. R. v. Niles, 218 Fed. 944.

Prentis v. Atlantic Coast Line, 211 U. S. 210.

III.

Considering the case upon the merits, there is the following fundamental objection to abrogation of the contracts: Rates for the supply of natural gas by a producing company to a distributing company are not subject to regulation, either under the terms of the Arkansas statutes, or under general law.

State v. Spokane & Inland Empire R. R. Co.,
89 Wash. 599.

State v. Public Service Commission, 275 Mo. 483.

State Public Utilities Commission v. Bethany Mutual Telephone Assn., 270 Ill. 183.

Bartee Tie Co. v. Jackson, 281 Ill. 452.

State Public Utilities Commission v. Monarch Refrigerating Co., 267 Ill. 528.

Railroad & Warehouse Commission v. Litchfield and Madison Ry. Co., 267 Ill. 337.

Sunset Shingle Co. v. Northwest Electric & Water Works, 118 Wash. 416.

Allen v. Railroad Commission, 179 Cal. 68.

Marin Water & Power Co. v. Town of Sausalito, 168 Cal. 587.

Stratton v. Railroad Commission, 186 Cal. 119.

Story v. Richardson, 186 Cal. 162.

Newell v. Redondo Water Co., . . . Cal. App. . . ., 202 Pac. 914.

Stoehr v. Natatorium Co., 34 Ida. 217.

Nowata County Gas Co. v. Henry Oil Co., 269 Fed. 742.

- Citizens Passenger Ry. Co. v. Public Service Commission*, 271 Pa. St. 39.
- Clear Creek Oil and Gas Co. v. Ft. Smith Spelter Co.*, 148 Ark. 260.
- North Carolina Public Service Co. v. Southern Power Co.*, 282 Fed. 837.
- Oklahoma Gas & Electric Co. v. Oklahoma Natural Gas Co.*, ... Okla. ..., 205 Pae. 768.
- Oklahoma Natural Gas Co. v. Corporation Commission et al.*, ... Okla. ..., 211 Pae. 401.
- German Alliance Insurance Co. v. Lewis*, 233 U. S. 389.

IV.

Even if such a contract could be abrogated, under ordinary circumstances, regulation of the rates charged by appellant to the distributing companies, Little Rock Gas & Fuel Company, and Consumers' Gas Company, by the Arkansas Railroad Commission, would have constituted an unreasonable burden placed by the State of Arkansas upon interstate commerce. Congress has not exercised its power over interstate commerce in gas. There is, therefore, no authority competent to abrogate the contracts.

- Minnesota Rate Cases*, 230 U. S. 352.
- Public Utilities Commission of Kansas v. Landon*, 249 U. S. 236.
- Pennsylvania Gas Co. v. Public Service Commission*, 252 U. S. 23, lower court (225 N. Y. 397).
- United Fuel Gas Co. v. Hallinan*, 257 U. S. 277.
- Central Trust Co. v. Consumers Light, Heat & Power Co.*, 282 Fed. 680.
- Missouri v. Kansas Natural Gas Co.*, 282 Fed. 341.

State ex rel. Helm v. Kansas Natural Gas Co.,
111 Kan. 809.

Port Richmond Ferry v. Hudson Co., 234 U. S.
317.

*Wilmington Transportation Co. v. California
Railroad Commission*, 236 U. S. 151.

Transportation Co. v. Parkersburg, 107 U. S.
691.

V.

Assuming that such contracts are subject to abrogation by state authority, nevertheless the Commission was correct in refusing to abrogate them in this case, because the Legislature withheld such power from the Commission by a part of Act 443. That part of Act 443, prohibiting the Railroad Commission from modifying or impairing existing contracts for supplying gas to persons, firms, corporations, municipalities or distributing companies, is constitutional.

12 *Corpus Juris*, Sec. 222 p. 794.

25 Ruling Case Law, See. 243, p. 1000.

6 Ruling Case Law, See. 77, p. 78.

St. L. S. W. Ry. Co. v. Arkansas, 235 U. S. 350.

12 *Corpus Juris*, Sec. 220, p. 787.

Landon v. Court of Industrial Relations, 269
Fed. 423.

German Alliance Ins. Co. v. Lewis, 233 U. S.
389.

Fidelity Mutual Ins. Co. v. Mettler, 185 U. S.
308.

Farmers, etc., v. Dobney, 189 U. S. 301.

*St. Louis, Iron Mountain & Southern Ry. Co. v.
State of Arkansas*, 240 U. S. 518.

Heisler v. Colliery Co., ... U. S. ... 43 Sup. Ct.
Rep. 83.

VI.

Even if the Commission had been lawfully empowered to regulate the rates charged by one public service company to others, and even if contracts therefor could constitutionally have been abrogated by the Commission, nevertheless the Commission is still without legislative authority to abrogate these contracts. If part of Act 443 is unconstitutional, that part is inseparable, and the whole Act is therefore void. There is no other statute in Arkansas permitting the abrogation of contracts.

Connolly v. Union Sewer Pipe Co., 184 U. S. 540.

Pollock v. Farmers Loan & Trust Co., 158 U. S. 601.

State v. Gantz, 124 La. 535.

Sprague v. Thompson, 118 U. S. 90.

Union County National Bank v. Ozon Lumber Co., 127 Fed. 206.

Chicago, M. & St. P. Ry. Co. v. City, 238 Fed. 384.

American Surety Co. v. Shellenberger, 183 Fed. 636.

Ex Parte Deeds, 75 Ark. 542.

VII.

Whatever may be the correct answers to the various points of practice and substantive law presented, the refusal of the District Court to permit the abrogation of the contracts, and to enjoin the rates existing thereunder, was correct, as a matter of equity, and should not be disturbed on appeal, for the record does not show ir-

reparable injury, or the abuse of the discretion of the lower Court.

Jones v. Cooper, . . . Ark. . . ., 242 S. W. 550.

Lonoke v. Bransford, 141 Ark. 18.

Town of Pocahontas v. Central Power & Light Co., . . . Ark. . . ., 239 S. W. 1.

Columbus Ry. Power & Light Co. v. City of Columbus, 249 U. S. 399.

Southern Iowa Electricity Co. v. City of Chariton, 255 U. S. 539.

Dawson v. Kentucky Distilleries & Warehouse Co., 255 U. S. 238.

Trenton, etc., v. Board, 229 Fed. 140.

Russell v. Farley, 105 U. S. 433.

Kryptok Co. v. Stead Lens Co., 190 Fed. 767.

ARGUMENT.

I.

This bill was premature, because the appellant had not pursued its appeal through the state courts, and the action of the Commission had not become final, under the rule of law established in *Prentis v. Atlantic Coast Line* (211 U. S. 210) and the cases following it.

The answer of the Little Rock Gas & Fuel Company stated that the rates filed by the appellant with the Commission included certain specified city gate rates to be charged against said Little Rock Company, and that the Commission refused to fix city gate rates; that appellant appealed from that order to the State Circuit Court, filed the transcript in that court, had the case set down for hearing, December 22, 1921, thereafter dismissed its appeal, and then filed this bill.

That answer alleged that the Circuit and Supreme Courts of the State had the power and function of reviewing said order and of confirming, modifying or fixing rates, and that the United States District Court had no jurisdiction to proceed with the hearing of this case because appellant had not prosecuted its appeal through the state courts (Rec. 27, 28). A similar answer was made by the Consumers Gas Company and the Arkansas Railroad Commission (Rec. 93, 81).

Appellant alleged in its bill that it filed its tariff with the Commission providing for city border rates, that the Commission declined to enter an order establishing city border rates, that it took an appeal to the Circuit Court from the order of the Commission, and that subsequent

to lodging said appeal, to wit, on January 31, 1922, it voluntarily dismissed its appeal (Rec. 28).

The United States District Court declined to issue an interlocutory injunction as against the Little Rock Gas & Fuel Company and Consumers Gas Company without giving any reasons therefor. If the bill was premature the action of the District Court can be justified on that ground and its judgment should be affirmed. This question is therefore squarely raised, and is the first question argued by appellant's counsel in their brief.

It is established in the *Prentis* case, and cases following it, that a federal court, on principles of comity, should not entertain an injunction suit against state commission rates in advance of the appeal through the courts from the order fixing the rates. The rule is limited to those states which have constitutionally conferred upon their courts the right to review the orders of the Commission and fix new and different rates. Those cases proceed on the theory that rate-making is a legislative function, and that where appeals to the court are provided for, in which the rate-making process can be reviewed in a legislative in contradistinction to a judicial manner, the legislative program has not been completed until the appeals have been gone through with.

So in *Mellon Co. v. McCafferty*, 239 U. S. 134, a failure to resort to ample and efficient administrative remedies existing under the state law to review assessments claimed to have been unlawfully made was held to prevent federal court interference on the authority of the *Prentis* case.

On the other hand in *Bacon v. Rutland R. R. Co.*, 232 U. S. 134, the *Prentis* case was not followed because the appeals provided for by the statutes of Vermont were strictly judicial appeals.

In that case this Court construed the ground of the decision in the *Prentis* case to be that the Court of Appeals of Virginia had power "to substitute such order as in its opinion the Commission should have made." This Court called that power "legislative." It then took up the statutes of Vermont providing for appeal, and demonstrated that the Vermont Court on such appeal was authorized merely to reverse or affirm, and referred to the fact that the Supreme Court of Vermont had so held. The Vermont Supreme Court in the cases referred to held that the court on appeal was not authorized by the statutes of the state to enter an order which the Commission should have made. This Court held that the remedy by appeal under the Vermont Statutes was "purely judicial: to exonerate the appellant from an order that exceeds the law."

This court in the *Mellon* case, *supra*, held that the appeal provided merely "an alternative and more expeditious way of doing what might be done by a bill in equity;" in other words, that confiscation is the only issue on such appeals.

In *Detroit & Mackinac Ry. v. Mich. R. R. Comm.*, 235 U. S. 402, the application of the *Prentis* case to a Michigan case was considered. This Court again construed the *Prentis* case as basing its decision on the proposition that the Virginia constitution gave the Court of Appeals "power to substitute such an order as in its opinion the Commission should have made," and again called that power legislative. This Court considered the scope of the appeal provided for by the Michigan statutes and held that under them the Court on appeal was not authorized to make a change in rates, but that its functions were confined to the determination of the question whether the rate was confiscatory or not. This Court held in that case that in the absence of a clear de-

cision by the state court to the contrary, it would not believe that the Legislature had attempted to grant or could grant powers to its courts *to substitute such order as in its opinion the Commission should have made.*

It is clear from these cases that whether the *Prentis* case governs depends upon the question whether the Supreme Court of Arkansas has decided that under the act under consideration the courts can, on appeal, substitute such orders as in its opinion the Commission should have made.

It is immaterial whether the power of revising rates on appeal is called legislative or by some other name. If the review by appeal accorded to Arkansas courts involves something more than purely judicial functions, if something more than confiscation is involved therein, then the *Prentis* case applies. If the Arkansas courts on appeal can fix new rates, or if they can make the order which they find the Commission should have made, then they have substantially the powers and functions accorded to the Virginia Court of Appeals by its constitution. If the Supreme Court of Arkansas has held that the Circuit Court on appeal possesses such power, then we have a construction of state statutes under the constitution of Arkansas which this Court will observe.

We agree with appellant's counsel that Section 19 of Act 124, governing the scope of the appeal from the Commission to the Circuit Court, does not contemplate a strictly judicial appeal, but that on the contrary, "it authorizes the Circuit Court to make findings and orders, based on the record, to be certified to the Commission, directing and requiring that action be taken by the Commission in conformity with such findings and orders." (Appellant's brief, p. 21.)

Section 21 of Act 124 of Acts of 1921, dealing with appeals to the Supreme Court of the State, provides:

"and in such case the appeal to the Supreme Court shall be governed by the procedure, and reviewed in the manner applicable to other appeals from such circuit court, except that any findings of fact by the circuit court shall not be binding on the Supreme Court, but the Supreme Court may and shall review all the evidence and make such findings of fact and law as it may deem just, proper and equitable."

It is therefore clear that the Arkansas statutes, in providing for appeals from the Commission to the Circuit Court, and from that Court to the Supreme Court, attempt to give those courts power to review that involves something more than a purely judicial function. Counsel for all parties agree that in so far as the Legislature can do so, the appeal provided for by the act under consideration is not a strictly judicial appeal; that the courts under that act are not confined in their review to the question of confiscation only; and that the scope of the power of the courts on appeal is, under that act, broader than the scope of the power involved in a suit to enjoin the order of the Commission based on confiscation. But counsel for appellant call that power legislative, and contend that under the constitution of Arkansas the Legislature has no power to delegate to courts a legislative function, and that that part of the act allowing legislative appeals is unconstitutional.

Counsel for appellant cite some of the Arkansas cases on that subject, and contend that the Arkansas Supreme Court has treated the functions of the courts on appeals from the orders of the Commission as judicial. We contend that the cases cited show that the Supreme Court of Arkansas regards the power conferred on the courts as something more than judicial, and that it has decided

that on such appeals the courts may fix a reasonable schedule of rates.

In *Van Buren Water Co. v. Van Buren*, 152 Ark. 83, the water company filed an application before the Commission cancelling its rates and putting in force new and higher rates. The Commission granted the application and approved the new schedule of higher rates. The city appealed to the Circuit Court, which disapproved the new schedule of higher rates approved by the Commission and ordered the original rates reinstated. The water company appealed to the Supreme Court of Arkansas, which held that the original schedule of rates was confiscatory, but said (p. 89) :

"The fact that the new rates were unreasonable did not justify the Court's order in compelling the company to restore the old rates, which were confiscatory. *It was within the power and duty of the Circuit Court to fix such rate according to the testimony in the record as was reasonable and which would afford a just return upon the investment.* (Citing) *Clear Creek Oil & Gas Co. v. Fort Smith Spelter Co.*, 148 Ark. 260. (Italics ours.)

Thus the Supreme Court of Arkansas has clearly decided that it was the power and duty of the Circuit Court to fix a reasonable rate which the testimony justified. That satisfies the rule laid down by this Court. It matters not what name the Court gives to this function and power, that it called it *quasi judicial* in *Clear Creek Co. v. Spelter Co.*, 148 Ark. 260; that it stated in *Jones v. Cooper*, Ark. . . . , 242 S. W. 550, that the functions of the Commission (p. 551) "are administrative in character, though its decision and orders are *quasi judicial* in the exercise of the powers conferred for the purpose of regulating and controlling public utilities;" or that it said in *St. L. S. W. Ry. Co. v. Stewart*, 150 Ark. 586, that the acts of the Commission are *quasi-judicial*, and of the

Courts on appeal *judicial*. The *Stewart* case involved the building of a station and the *Jones* case the removal of railroad tracks. Neither were rate cases.

There is a confusion in the use of words in defining the character of the function of the Commission and of the courts exercised in fixing rates. Arkansas is not alone in that confusion as will be hereafter shown, but as said by the Supreme Court of Arkansas in the *Clear Creek* case; "the name given to the method of review by the Legislature is not important." There is nothing in a name. The question is the real nature of the function or power of the court exercised in reviewing orders of the Commission in rate cases. As said in the *Prentis* case, 211 U. S. 210, the *Bacon* case, 232 U. S. 134, and the *Mich. R. R. Comm.* case, 235 U. S. 402, the question is whether the courts have power on appeals to substitute such an order as in its opinion the Commission should have made. That is what we contend the Supreme Court of Arkansas has clearly held was the power and duty of the Circuit Court on appeal from orders of the Commission fixing rates under the act now under consideration. If that is true the *Prentis* case applies.

Turning to a few of the cases from other states determining whether their courts have the power practically to make rates upon appeal from orders of Commissions under constitutions similar to Arkansas, providing for a separation of its departments of government, we find the power sustained, but a confusion in terms defining the nature of the power.

In *Janvrin et al. v. Revere Water Company*, 174 Mass. 514, the Supreme Court of Massachusetts in an opinion rendered by Holmes, C. J., upheld, under the constitution of Massachusetts separating the judicial and legislative and executive departments, an act authorizing the Supreme Judicial Court to establish such maximum

water rates as said court shall deem proper. The court agreed with the proposition laid down in *Regan v. Trust Company*, 154 U. S. 362, that it was not the function of courts to establish a schedule of rates, but held that as to "persons deeming themselves aggrieved," as to interests actually and legitimately before the Court, the Court had a right to fix reasonable rates. The Court thus aptly defined the nature of the power exercised by the Court as follows: "*It is a judicial investigation in aid of a legislative regulation.*"

State v. Crosby, 92 Minn. 176, involved the constitutionality of the act of the legislature of Minnesota, authorizing district courts to establish and provide for the construction of ditches. It was contended that the act was unconstitutional because an attempt was thereby made to confer upon the courts legislative and administrative powers. The Court cited many illustrations where the Minnesota Supreme Court had upheld acts authorizing reviews by the courts on appeal, and admitted that the power and authority in each illustration cited was legislative in character, but said that in carrying out and applying the statute the exercise of judicial functions was also involved. The Court reached the conclusion that the power involved the exercise of *both legislative and judicial powers*, and held that the courts of Minnesota could exercise that *mixed power* under a constitution providing for the separation of the departments of government.

In *Re Koochiching County Taxes*, 146 Minn. 87, a statute was involved which authorized courts on appeal to reassess taxes. In that the court on appeal found the true and actual value of each tract, and entered an order reducing the tax to correspond therewith. It was contended that the statute was unconstitutional as an attempt to confer on the Court authority and jurisdiction over matters of purely legislative or administrative cogni-

nizancee. The Court held that the proceedings under the statute were administrative in character, and that they were not changed by the fact that the assistance of the judiciary was involved in their final completion; that there was thus a *co-mingling of administrative and judicial functions*, and that duties of a *mixed legislative and judicial or quasi-judicial character* might be conferred or imposed on the courts of Minnesota without infringement of the state constitution, referring to numerous Minnesota cases.

State v. Duval County, 76 Fla. 180, involved an act which it was claimed conferred legislative powers upon a court. The Supreme Court of Florida quoted the provisions of the Florida constitution dividing the government into three separate departments, just as does the constitution of Arkansas, but held there had been no complete and definite designation by a paramount authority of all the particular powers that appertain to each of the several departments, and said that perhaps there could be no absolute and complete separation of all the powers of a practical government, and upheld an act providing for the fixing of bridge tolls by a commission, subject to a review by a court which was empowered to increase or decrease them.

With the exception of six states, all of the American State Constitutions contain a provision for the separation of governmental powers into legislative, executive and judicial, and most of them provide also that neither branch may exercise powers belonging to the other, while others provide that a person who is one of the three departments shall not exercise any powers belonging to either of the others except in cases expressly directed and permitted by the particular constitution. While that is the theory of American constitutional government it is no longer an accepted canon among political scientists

and has never been entirely true in practice. The Courts of the various states recognize that the separation of the powers is far from complete and that the line of demarcation between them is often indefinite, and that in practice each of the three departments normally exercises powers which are not strictly within its province. See 12 *Corpus Juris*, Sec. 235, page 803.

That proposition is admirably stated by Wolverton, D. J., in *Oregon R. & Navigation Co. v. Campbell*, 173 Fed. 957, which case was affirmed by the Supreme Court of the United States in 230 U. S. 525. Judge Wolverton in that case refers to the fact that a three department government is common to all of the state constitutions, but states that none of them break on a strict line into legislative, executive and judicial functions.

In the case of *State v. State Public Service Commission*, 94 Wash. 274, the Supreme Court of Washington held that the article of the constitution separating state government into three distinct departments was not to be interpreted as enjoining a complete separation between those several departments. The Court states that practically it has never been so in any of the states in whose fundamental law the principle has been asserted, and proceeds to cite numerous instances to show that it has not been so regarded in the State of Washington.

The Supreme Court of North Carolina in the case of *Brown v. Turner*, 70 N. C. 93, 102, states that while it is true that the executive, legislative and supreme judicial powers of the government ought to be forever separate and distinct, it is also true that the science of government is a practical one and that therefore, while each should firmly maintain the essential powers belonging to it, it cannot be forgotten that the three coordinate parts constitute one brotherhood whose common trust

requires a mutual toleration of the occupancy of what seems to be a "common cause of vicinage" bordering the dominions of each. The Court points out that there are many acts in that state possessing a legislative, executive or judicial character especially peculiar to the very nature of our system and necessarily inherent in it which time out of mind have not been exclusively exercised by these departments and which, for the ease and efficiency of our system, cannot be so exercised.

The same idea is expressed in the case of *Taylor v. Place*, 4 R. I. 324, 332, in which the Court states the complete separation of all governmental powers into legislative, executive and judicial is abstract and general and in actual practice impossible.

In the case of *Hovey v. State*, 119 Ind. 395, 401, the Court stated that while the boundaries that separate the functions of the different departments are broad, clear and distinct as applied to matters affecting property rights, of private concern, it is not easy to discriminate or formulate definitions as to what constitutes legislative, executive or judicial authority when questions of public policy or which relate to the best means and agencies for accomplishing a governmental end or of executing the law are involved.

In the case of *Derine v. Brunswick-Balke-Collender Co.*, 270 Ill. 504, the Court states that in the practical application of distinguishing between the different departments and duties and functions of each to the affairs of state, it is often difficult to determine to which of these three departments the duties and functions of many offices properly belong, and that this arises from the fact that in the practical administration of state affairs there is often such a blending and mixture of the different powers of government that instances will occur in which

offices are charged with functions and duties which partake of the nature of all three of these departments.

We have cited these state cases to show that Arkansas is not alone in not drawing a clear line of distinction between the judicial and legislative departments, and in perhaps confusing terms when it comes to state the character of the function exercised by the courts on appeal in reviewing rate orders of commissions.

The Legislature of Arkansas has uniformly conferred on her courts powers that are not strictly judicial and the courts have universally upheld them.

In *Mo. Pac. R. R. Co. v. Highway Imp. Dist.*, 143 Ark. 261, the Court held that the assessment for local improvements by an improvement district commission was in the exercise of a legislative rather than a judicial function. Yet the Arkansas statute books abound in improvement district laws which confer upon courts the power to review assessments, and this review is not limited to the strictly judicial power of declaring an assessment unreasonable. Under the municipal improvement district laws of the state, a city council is authorized to assess by means of an ordinance the benefits against the property in the district. (Crawford & Moses Dig. Sec. 5667.) It is then provided that all persons who shall fail to begin legal proceedings within thirty days after such publication for the purpose of *correcting* or invalidating such assessment shall be forever barred and precluded. That permits a suit in a chancery court to *correct* the amount of the assessments.

The Supreme Court of Arkansas has decided in numerous cases that in chancery court proceedings the Court has the power in a timely proceeding to correct the amount of the assessment.

In *Board v. Pollard*, 98 Ark. 543, the Court held that if such board made "a mistake of judgment in the amount

of such benefit," then he may have his grievance corrected by the council, and thereafter by a legal proceeding begun within thirty days after publication of the ordinance. To the same effect are *Kirst v. Street Improvement Dist.*, 86 Ark. 1, 13; *Board v. Offenhauser*, 84 Ark. 257, 269.

Arkansas has passed many special improvement district acts giving to parties aggrieved at the amount of the assessments against their lands the right to file a complaint in a chancery court, and these acts have been upheld by the Supreme Court of Arkansas.

Monette Road Imp. Dist. v. Dudley, 144 Ark. 169.
Nettles v. Hazelwood Road Imp. Dist., 144 Ark. 632.

The substitution of the judgment of the Court for that of the city council in the fixing of the amount of the benefit to a piece of property in an improvement is not the exercise of a judicial function. Yet the courts of this state are authorized to perform that function.

An act of the Legislature of 1913 provided that the finding of the council upon the specified petition that it contains a majority of the signatures of property owners of the district shall be conclusive, unless within thirty days thereafter suit is brought to review its action in the chancery court. Thus the purely legislative or administrative duty of determining whether a majority has signed is conferred upon our courts and that statute has been upheld in *Pope v. City*, 131 Ark. 429, *Waters v. Whitcomb*, 131 Ark. 28, and *Jacobs v. City*, 131 Ark. 28.

Act 338 of the Acts of the Legislature of 1915, forming an improvement district gave property owners the right to have any errors in the assessments of their property corrected by an appeal to the Circuit Court, and the Supreme Court of Arkansas held that they had thus an ad-

equate remedy. *Chapman & Dewey L. Co. v. Road Imp. Dist.*, 127 Ark. 318.

Under the Constitution of 1874, the Circuit Court has original jurisdiction in all civil cases the exclusive jurisdiction of which is not vested in some other court. It is the repository of all unassigned jurisdiction. In *Grassy Slough Drainage District v. National Box Co.*, 111 Ark. 144, the Supreme Court of Arkansas held that Circuit Courts had original jurisdiction in the formation of improvement districts. In that case the Circuit Court was held to have the power to establish a drainage district, appoint commissioners and do all of those acts usually delegated to county courts. Undoubtedly most of the acts of the Circuit Court in such cases are strictly legislative, while some of them are administrative and others are judicial.

The Circuit Court has a superintending control and appellate jurisdiction over county courts, and on appeal the Circuit Court tries the case *de novo* and renders such judgment as the County Court shall have rendered. The County Court has jurisdiction over county taxes, roads, bridges, ferries, paupers, elections and many other legislative and administrative functions. On appeal the Circuit Court exercises all of these legislative and administrative functions to the same extent as does the County Court. True, the jurisdiction of the County Court is largely conferred by the constitution, and the constitution confers the right of appeal to the Circuit Court, so that it may be said that the constitution has thus delegated in appeals from county courts to circuit courts the power to do acts that are purely legislative and administrative.

It is thus seen that Arkansas is not one of those states where a sharp line is drawn between its three departments. To hold that a mixed judicial and legislative func-

tion cannot be constitutionally conferred on circuit courts will strike down powers conferred and duties assumed by those courts without question during the entire history of the state. It will strike down scores of decisions upholding the exercise of such powers. It will revolutionize the system of jurisprudence in the state, and leave the circuit courts stripped of many of its most important functions.

Act No. 124 was intended to give and does give to parties an efficient system of appeal.

Act No. 443 was careful to preserve that right of appeal. The appeal is a part of the legislative scheme of fixing rates, which is not concluded until the appeals are prosecuted to the end. While the character of the functions conferred on the courts may not be strictly legislative, it is certainly not strictly judicial. It is a mixed function, and is most appropriately dubbed, to use the language of Justice Holmes in the Massachusetts case, *supra*. "It is a judicial investigation in aid of a legislative regulation."

So careful was the Legislature to protect the parties against the rule established by the Supreme Court that it will affirm on questions of fact if there is any substantial evidence, that it provided that any finding of fact by the Circuit Court shall not be binding on the Supreme Court, but that the Supreme Court may review all the evidence and make such findings of fact and law as it may deem just, proper and equitable.

The record in this case discloses that an appeal from the Commission to the Circuit Court was perfected, the transcript filed in the Circuit Court, a motion for a temporary injunction was filed, and the cause on appeal set down for hearing on December 22, 1921. Under the terms of Sec. 20 of Act 124, the Circuit Court or Judge

has the right to issue such temporary or preliminary orders as to it or him may seem proper until final judgment is rendered. The legislative program was not at an end with the final order of the Commission, and we earnestly submit that the *Prentis* case applies.

II.

Even though the legislative act had become final, so that the bill was not premature on that ground, still the rule of comity demands that consideration of the constitutionality of Act 443 wait until that question has been passed upon by the Arkansas Supreme Court.

In the case of *St. Louis S. W. R. Co. v. Arkansas*, 235 U. S. 350, this Court said (p. 369) :

"And in exercising the jurisdiction conferred by Section 237, Judicial Code, it is proper for this Court to wait until the state court has adopted a construction of the statute under attack, rather than to assume in advance that such a construction will be adopted as to render the law repugnant to the Federal Constitution. *Bachtel v. Wilson*, 204 U. S. 336, *Adams v. Russell*, 229 U. S. 353, *Plymouth Coal Co. v. Pennsylvania*, 232 U. S. 531, 546."

That case was an appeal to the Supreme Court of the United States from the Supreme Court of Arkansas where there was drawn in question the validity of a state statute.

In the case of *Louisville & Nashville Railroad Company v. Garrett*, 231 U. S. 298, which was a direct appeal to this Court from the District Court as in this case, the Court, through Mr. Justice Hughes, said (p. 305) :

"So far as we are advised, the Court of Appeals of Kentucky has not passed upon the validity of the act in question; and this Court has often expressed its reluctance to adjudge a state statute to be in conflict with the constitution of the State be-

fore that question has been considered by the state tribunals—to which it properly belongs—unless the case imperatively demands such a decision. *Pelton v. National Bank*, 101 U. S. 143, 144; *Michigan C. R. Co. v. Powers*, 201 U. S. 245, 291. Here, the argument against the statute, is not of that compelling character."

The same principle is announced in the case of *Boston & M. R. R. v. Niles*, 218 Fed. 944, and in that case Aldrich, District Judge, collected the authorities on the subject, and holds that they apply with the same force where the state statute is claimed to be in violation of the federal Constitution (p. 949). In answer to the suggestion that if appellant had proceeded to test this statute in the state court it would thereafter be met with a plea of *res adjudicata*, the Court stated that appellant would be at liberty to renew its application in the federal court after a decision by the state court, and thus avoid the plea of *res adjudicata* as was set out in *Prentis v. Atlantic Coast Line*, 211 U. S. 210.

III.

Considering the case upon the merits, there is the following fundamental objection to abrogation of the contracts: Rates for the supply of natural gas by a producing company to a distributing company are not subject to regulation, either under the terms of the Arkansas statutes, or under general law.

We contend that the Arkansas Public Utility Act did not by its terms or intent affect, and could not constitutionally affect, the contracts between the appellant and the Little Rock Gas and Fuel Company and the Consumers Gas Company, those contracts being matters with which the public was in no wise concerned.

The proceeding here, so far as the Little Rock Company and the Consumers Company are concerned, is an effort by indirection to cancel or to revise a contract establishing relations over which it was never intended the Commission should possess jurisdiction, and in respect of which the Legislature could not constitutionally confer jurisdiction. It must be perfectly obvious from a reading of the Act that the rates over which the Commission is given jurisdiction, and which are required to be set forth in the rate schedules filed pursuant to the Act, are those open to consumers generally, that is to say, the "*public.*" The particular service to be covered is that which the public utility holds itself out as furnishing to the public *generally* and which the public *generally* is entitled to demand under these rate schedules.

It is our contention that one public utility receiving gas from another is not a part of the "*public*" within the meaning of the statute; that the service thus rendered is not one authorized or required to be stated in the rate schedules; that contracts in respect of such service entered into prior to the passage of the Act are not subject to revision by the Commission and, in short, that the service here involved to the Little Rock Company and the Consumers Company is not a public service over which the Commission is given jurisdiction.

Before considering the effect of the statutes involved and the constitutional power of the Legislature in respect of the subject matter thereof, let us endeavor to ascertain what must have been under consideration by the Legislature when the public utility law was enacted. The law grew out of the fact that public utilities hold themselves out as prepared to render certain service to the "*public,*" that is, to anyone who asks it within their field of operation. The public thus becomes entitled to demand such service and under modern conditions it has

become a necessity. The public was to a large extent at the mercy of the utility because there is ordinarily but one such utility in the community. Opportunity was presented on the one hand for extortion by the utility and, on the other hand, for the consumer to receive service at unremunerative rates on account of changing conditions. The Legislature desired to protect both the consumer and the utility, neither being able to fully protect itself. The utility could not itself provide adequate protection because it might be bound by franchise conditions or meet ruinous competition. The public was helpless because in most instances the utility was practically a monopoly. The fundamental basis, however, was the voluntarily assumed obligation of the utility to render service to whoever demanded it—the public—and the corresponding right on the part of any one to demand such service. It was this situation which the Legislature had before it and the evils growing out of which it intended to remedy.

But no such situation prevails in respect of the contract between the appellant and the Little Rock Company and the Consumers Company. Manifestly, the complainant was not, at the time these contracts were entered into, engaged in the business of supplying gas generally to other public utility companies for distribution among the latter's consumers. Neither the Little Rock Company nor the Consumers Company could have demanded, nor was the Arkansas Company bound to render, such service. A corporation becomes a public utility when it holds itself out as prepared, and is prepared, to render service to the public, but by the public is meant the ultimate consumer. Another public utility is not the public, unless, perhaps, in the exceptional case (and we doubt the soundness of even this exception) where a producing company engages generally in

the business of supplying, and is prepared to supply, its commodity, for purposes of resale or redistribution, to all other utilities which may ask it.

Not only must it be perfectly manifest that at the time the contracts in question were entered into the Arkansas Company was not engaged in a public utility business of supplying gas for purposes of resale to anyone who might ask it, and that neither the Consumers Company nor the Little Rock Company could have compelled the Arkansas Company to supply them, but it appears that down to the very date of filing this bill the Arkansas Company was not supplying gas to a single distributing company except the Consumers Company and the Little Rock Company, and this supply was rendered under contracts which had been entered into by appellant long prior to the passage of the Act and long before it had delivered a single foot of gas to the public or to anyone else in the State of Arkansas. The so-called rate schedule which it filed with the Commission purporting to fix a city border rate for natural gas was a rate schedule for that service in name only, and a palpable attempt, under the guise of being engaged in a public service in which the appellant was not engaged at all, to change the existing contracts between the appellant and the Little Rock Company and the Consumers Company.

Section 6 of Act 571 as originally passed and as amended by Act 124 requires that everyone engaged in "a public service business" shall maintain adequate and suitable facilities, etc., and that all charges, tolls, rates and fares shall be just, and Section 7 provides that these rates shall not be changed except pursuant to new schedules. There is not even in this Act, as there is in some acts of this character, any provision requiring the approval of the Corporation Commission as to intercorporate relations or the furnishing to the Commission of

reports or copies of contracts relating to such intercorporate relations. Neither does Act 443, on any proper interpretation thereof, as to the cases then pending before it purporting to involve the relations between the complainant and the Arkansas Company and the Little Rock Company, attempt to enlarge the jurisdiction beyond that conferred by the original Act No. 571, but merely to make it clear that as to those cases the jurisdiction of the Commission should not be affected either within or without the municipality.

It is somewhat significant, in considering this question, to note that notwithstanding Act 571 which, if counsel's contention is correct, vested the Commission with jurisdiction over the relations between the appellant and the Arkansas Company and the Little Rock Company, the appellant nevertheless continued to treat the relations as growing out of a purely private contract and attempted to cancel the contract by a notice served in December, 1920, upon grounds in no way growing out of the passage of the Public Utility Act, but for the alleged reason that the contract had become inoperative because of changed conditions which it was asserted would have been sufficient to terminate it as a purely private arrangement (Rec. 27).

The contracts here were entered into prior to the passage of the Act. They were executed looking to operation thereunder for a long period of time. The distributing companies adjusted their plants and equipment to conform to the contract. They created correlative rights and obligations on the part of both companies which the Commission has no more right to change than it would have the right to change the terms of a lease which conceivably had been entered into between the appellant and one of the distributing companies prior to the passage of the Act, or to change a contract by which, for

illustration, an artificial gas company contracted for a supply of coal over a long period of years or for the sale of its coke over a like period.

Both of the contracts provided for the sale and delivery of gas by the appellant to the particular distributing company, in payment for which the distributing company was to pay to appellant an amount equal to certain proportions of the gross receipts of the distributing company from its consumers. The appellant was careful to provide in its contract that after the delivery of the gas to the distributing company it should have no dominion or control thereof whatsoever or be responsible for or on account of anything that might be done, happen or arise relating thereto.

There is another aspect of this situation which it seems to us makes it perfectly obvious that the service here rendered to the distributing companies is not a public service which the Legislature of Arkansas either intended to or could constitutionally affect, and that is that the exercise of this asserted power is in no sense necessary to protect the public. The public is entitled to receive natural gas from those who undertake to supply it at reasonable rates. These rates are subject, as stated, to regulation because the public in no other manner can be assured of service at such reasonable rates, but the public is not legally affected by the price which a distributing company pays for its gas or by arrangements which it may make with another corporation, public utility or otherwise, for the disposition which shall be made of the rates which the public in fact pays. It is only concerned with the rates which it pays.

A few illustrations of this will, it seems to us, make the point clear. If an artificial gas company were distributing gas in a municipality and were purchasing its supply of coal under a long-term contract providing for

the payment of exorbitant prices for such coal, it is too plain for argument that in fixing the price for gas the Commission would base its rates upon a reasonable price for such coal without reference to the contract, and if by reason of the contract the net return to the public utility were diminished that would be the loss of the utility and not of the consumer. Similarly, if an artificial gas company entered into a long-time contract to dispose of its coke (which is its principal residual) at an unreasonably low price, the Commission in fixing the rates to be charged by this utility to the public would base such rates upon its receiving a reasonable price for its coke. The illustration is equally applicable to the purchase by a utility of natural gas for distribution. The only difference between the purchase of gas and coal is that the latter requires an additional step before the gaseous content is prepared for distribution to the public. Similarly, if an existing gas company had leased its plant to another company on a rental basis which subsequently proved to be unreasonable, the Commission would not have power to change the lease, but would fix rates which by reason of its improvident contract would give to the utility a less return than it anticipated. It is no answer to this to say that a utility by reason of improvident contracts of this character might be forced into bankruptcy or receivership. Neither bankruptcy nor receivership affects the continuing duty of the utility to render service to the public. This obligation overrides all others and even authorizes courts to displace liens to such extent as may be necessary to render the service. But if this were a good answer it would render it impossible for a utility to make a binding contract in respect of any matter because, perchance, if improvidently made, it might result in the bankruptcy or insolvency of the utility. It could not make contracts for a continuing supply of coal or oil or pipes or copper. It

would be compelled to purchase its supplies from day to day on the basis of current market conditions, a manifestly unsatisfactory method under ordinary circumstances of conducting a business, because if its contracts possess no sanctity they manifestly are not contracts at all. The true rule is that a public utility must render service to the public at reasonable rates. If, in equipping itself to render this service, it makes provident contracts it is entitled to their benefit. If the contracts are improvident, it must bear the loss. The rates to the public must at all times be reasonable and remain unaffected by such contracts.

An illustration of this is found in the case of *St. Joseph Gas Company v. Barker*, 243 Fed. 206, where the United States District Court, for the Western District of Missouri, in a case heard by three judges, under the applicable provision of the Federal statute, recognized the validity and binding force of a contract of this kind and stated (p. 212) that the Commission properly invoked the "indisputable rule that notwithstanding contracts between parties engaged in producing, furnishing or transporting public utilities, reasonable charges only will be allowed as against the public." In that case the Commission had not purported to affect the contract between the producing and the distributing company, but only to determine that the amount paid by the distributing company was unreasonably high and to refuse to take into account the full amount so paid in fixing the rate to be charged to the public. And the federal court actually refused to grant any relief because of the producing took, as it had a right to take, its contract percentage of the increase, under the peculiar circumstances of the case, the revenues of the distributing Company would not in fact be materially increased. To the same effect is *Citizens, etc., Co. v. Public Service Commission*, 271 Pa. 39, cited below.

Other illustrations may be found in numerous decisions of the courts and commissions, to which it is unnecessary to refer, where Commissions, without purporting to affect the contracts out of which the same arose, have refused, in fixing rates to the public, to take into account certain contractual charges for supervision and management, and other cases where a Commission in a case where a public utility was overdeveloped beyond its reasonable needs has refused, in fixing rates, to take into account such overdevelopment or to permit the utility to earn a return thereon.

In short, matters of this kind have nothing whatever to do with the rate to be charged to the public.

There are a large number of cases in which this question has been considered and in which, with one or two minor exceptions, clearly distinguishable from the case at bar, the courts have taken the view which we have above expressed.

In *State v. Spokane & Inland Empire R. R. Co.*, 89 Wash. 599, where a traction company was engaged in operating a street railway system and maintained a power plant which generated a large amount of power, developing a surplus in excess of that required to operate its street railway system, which it sold under private contracts to others for various purposes, including, *inter alia*, two or three owners of electric light plants, it was held that this sale of power was not for a public use and that the company, as to such sale of power, was not a public utility within the meaning of the statute. The Court said (p. 603) (italics ours):

"The company is insisting that its contracts with private individuals for the sale of excess power are of no concern to the State because they pertain to private business in no way affecting the public, while the State is insisting that such contracts are essential to an intelligent exercise of its admitted

function to inquire into and regulate appellant's traction rates.

* * *

"To review the cases in detail would serve no purpose. * * * the fact remains that, wherever the exact question has been submitted to the Court, it has held to the doctrine of the earlier cases, that is, that the sale of power to be used by others for traction purposes, lighting, manufacturing, etc., is not a public use, * * *

"The final and controlling question is whether the Act of 1911 has extended the jurisdiction of the Public Service Commission over power companies regardless of the character of the business in which they are engaged. * * *

"This leads us to a construction of the statute. The purpose of the state in creating the Public Service Commission was to regulate '*public service properties and utilities.*' * * *

"It is argued that the present act (Laws 199, p. 538; 3 Rem. and Bal. Code, Sec. 8286-1, *et seq.*), furnishes ample authority for holding that public necessity, as evidenced by the legislative declaration, now requires that such companies be held subject to regulation in their private affairs, and that the right of the public to the enjoyment and use of such property is regulated, guaranteed, and safeguarded by appropriate legislation. But we think the act does not go so far. That it assumes jurisdiction over power companies and electrical companies may be conceded, but we find nothing that compels the conclusion that the Legislature intended to inquire into or regulate such companies except in so far as their business affects the right of the whole public to their products upon fair or reasonable terms.

"*Granting for the sake of argument the right of the Legislature to exercise the police power to the extent of regulating and controlling the price to be charged for power sold to private individuals or to others, such right should not be declared by the courts in the absence of express legislation.* The regulation and control of business of a private nature is sustained by reference to the police power, and even then it is sustained only when the courts have been able to say that the business is, in char-

aeter and extent of operations, such that it *touches the whole people and affects their general welfare.* It is upon this principle that *Noble State Bank v. Haskell*, 219 U. S. 104, and *German Alliance Ins. Co. v. Kansas*, 233 U. S. 389, rest. * * *

* * *

"At the time the act of 1911 was passed the law was well defined and certain in its terms. *The sale of power to individuals or companies to be in turn sold was not a public use.* The rule and cases declaring it must have been well understood by the Legislature. *Yet the act nowhere attempts to cover any use theretofore deemed to be private. Its whole context seems to compel the thought that it had in mind only such uses as the public might compel.* There is nothing to indicate a legislative intent to declare that the sale of surplus or secondary power pending a future use by a company in the performance of its public functions is a thing that affects the general welfare, the health, peace, or happiness of the citizen, or that it is in any way necessary to sustain the right of the State to govern. * * *

"The Commission insists that it cannot find a basis for rate making without knowing the private as well as the public affairs of the appellant. Granting that the appellant is entitled to a fair return upon its investment and the public to a fair rate of transportation, to hold that respondent could figure appellant's private contracts as a basis for rate making would in turn compel the holding that appellant would be entitled to take from the public enough to make good its losses in its private enterprises. *The State has no interest, either in appellant's gains or losses in its private enterprises.* It has not yet assumed to stand as an inquisitor or conservator in private business.

"The act creating the Commission reflects no more than an intent to care for every right of the public in so far as they relate to the public functions of a public service corporation."

The same doctrine is in effect laid down in *State v. Public Service Commission*, 275 Mo. 483.

In *State Public Utilities Commission v. Bethany Mutual Telephone Association*, 270 Ill. 183, the Supreme Court of Illinois held that a telephone company organized to furnish telephone service only to its members was not a public utility, saying (p. 185) (*Italics ours*) :

"* * * The jurisdiction of the commission is by the terms of the act confined to control and supervision of owners and operators of property devoted to a *public use*. *The purpose of the act is to bring under control by the public, for the common good, property applied to a public use in which the public has an interest.* The owner of such property must submit to be controlled by the public to the extent of its interest so long as such public use is maintained. (*Munn v. People*, 94 U. S. 113; *People v. Western Union Telegraph Co.*, 166 Ill. 15; *Inter-Ocean Publishing Co. v. Associated Press*, 184 Ill. 438.) To constitute a public use *all persons must have an equal right to the use*, and it must be in common, upon the same terms, however few the number who avail themselves of it. It is not essential to a public use that its benefits should be received by the whole public or even a large part of it, but they must not be confined to specified, privileged persons. (*People v. Ricketts*, 248 Ill. 428.) *The words 'public use' mean of or belonging to the people at large, open to all the people to the extent that its capacity may admit of the public use.* (*State Public Utilities Com. v. Monarch Refrigerating Co.*, 267 Ill. 528.) The use must concern the public as distinguished from an individual or any particular number of individuals, but the use and enjoyment of the utility need not extend to the whole public or any political subdivision. It may be confined to a particular district and still be public."

In the case of *Bartee Tie Company v. Jackson*, 281 Ill. 52, the Chicago and Eastern Illinois Railroad Company owned a tract of land upon which were located some switchtracks. It leased this tract of land to various people to store ties. Certain ties were stored thereon and destroyed by fire. The leases exempted the Rail-

road Company from liability. It was conceded that this exemption was effective if the yard was not railroad property devoted to public use; in other words, if the railroad was not in respect of this yard, a public utility. The Court held it was not. The Court's attention was called to *State Public Utilities Commission v. Monarch Refrigerating Co.*, 267 Ill. 528, and it was contended that, under the doctrine of that case, the yard was devoted to a public use, but the Court said (p. 458) (*Italics ours*):

"Public use requires that all persons must have an equal right to the use and that it must be in common upon the same terms, however few the number who avail themselves of it; that it shall be open to all people to the extent that its capacity may admit of such use. * * * We find no basis for holding that it was the duty of the appellee's company to allow any of this property to be used by anyone who desired it for storage purposes. In *Checkley v. Illinois Central Railroad Co.*, *supra*, the railroad company leased a part of its right-of-way to Checkley for a warehouse and the warehouse was burned. That lease was somewhat similar in terms, as to the liability from fire, to the lease here in question. The Court there said (p. 495): 'But the lease by appellee of a portion of its right-of-way for a warehouse does not relate to any of the duties imposed by the law upon appellee as a common carrier. The public is in no way concerned in this transaction, nor is it a matter of public interest whether the loss of the property destroyed by fire shall fall on one party rather than on the other. The situation is entirely different between the loss of this warehouse and its contents and the loss of goods intrusted to a carrier for transportation. In the latter case the public has an interest which is conserved by holding the carrier to a strict accountability for its negligence or that of its servants, and this for the plain reason that the public is compelled to employ the carrier to transport goods. Any member of the public is liable to require the services of a common carrier, and the carrier is under the legal duty of serving the public indiscriminately. Not so in regard to

leasing a part of its right-of-way for a warehouse or an elevator. While the railroad company has the power to make such lease if it does not interfere with its duties to the public, it is in no sense required to do so. No one could compel a railroad company, by mandamus, to lease its right-of-way for such purposes. It relates to a matter that is entirely within the discretion of the railroad company.' (See, also, authorities in note to this case in 31 Ann. Cas., 1206.) We think that reasoning applies with full force to the use and leasing of this land for storage purposes. It seems clear to us, under the law, that appellee's company was under no obligation to lease this land to appellant. In so doing it was acting for the convenience of both parties."

In the case of *Railroad & Warehouse Commission v. Litchfield and Madison Railway Company*, 267 Ill., 337, two railroad companies had entered into an agreement respecting the establishment of an interlocking system. The Railroad & Warehouse Commission did not deem this interlocking system safe and ordered a different arrangement, but threw all the expense upon one of the parties. The Court said (p. 342):

"The contract was binding upon the parties when made, but in the judgment of the commission the plan thereby provided was not sufficient for the protection of the public, and a plan was adopted which involved much additional expense not contemplated by the parties. The public welfare was not affected, one way or the other, by the question which corporation should bear the expense, the public interest involved relating only to having the safety device installed and operated."

In the case of *Sunset Shingle Co. v. Northwest Electric & Water Works*, 118 Wash. 416, the Supreme Court of Washington adhered to its previous decision, *supra*, and held that the furnishing by an electric company to a mill outside the city of steam, heat, repairs to the electrical equipment of the mill and power for the mill under a

contract giving the Electric Company the mill waste for fuel was not the rendering of public service within the Statute regulating such service. The Court, in deciding this case, used the following pertinent language (p. 426) (Italics ours) :

"We may concede for present purposes that respondent is, generally speaking, a public service corporation; * * * But it does not follow that every act and thing done by respondent, even though it be in a sense service rendered to a person or corporation in compliance with the terms of some contract made by it with such person or corporation, is a public service subject to the regulatory provisions of our public service statutes. In controversies such as this the question is not so much as to whether or not the corporation is a public service corporation—a general term often of very loose application when discussing public service problems—but *whether or not the service in question is a public service*. Manifestly our public service statutes and the administration of them have to do only with public service rendered by corporations engaged therein. Therefore let us not be led astray by the fact that respondent is, generally speaking, a public service corporation, but direct our inquiry to the question of whether or not the service here in question, agreed to be rendered to appellant by respondent, is a public service. If it is not, then plainly the contract in question does not fail of its binding force upon respondent because of the provisions of our public service statutes. * * *

"Assuming, for argument's sake only, that a corporation may so dedicate its property to the furnishing of electric power to the public for purposes other than light, so as to make such furnishing of power a public service subject to the regulatory provisions of our public service statutes, we are still quite convinced that what might be here termed such a dedication of this steam electrical plant was at all events subject to appellant's rights under the terms of the contract. Those rights were acquired and reserved to appellant as against this very steam electric plant as well as against respondent generally, at the time of the coming into existence of the plant. In-

deed, this steam electric plant was constructed for and in a sense dedicated to the service of appellant's plant before the public could possibly have acquired any rights therein by virtue of the dedication of that plant by respondent to the furnishing of power to the public as a public service. In other words, the service to be rendered by this steam electric plant which in any sense could be said to be dedicated to the public was the service which it might be able to render to the public after the service rendered which appellant was entitled to under the terms of the contract, which we think never has been dedicated to the public service, and hence remains a private service."

In *Allen v. Railroad Commission*, 179 Cal. 68, a corporation sold water certificates to purchasers of land from an associate corporation entitling them to a specified quantity of water at an agreed price. It also engaged to supply a town site and a municipality with water, this, however, being but a small part of its total required water supply. Both the State Constitution and the Utility Act were broad enough *by their terms* to cover the power service. It was held that notwithstanding the fact that its source of water supply was single and undivided, it was not, as to the holders of its water certificates, a public utility. In this case the Court used the following pertinent language (p. 81) (Italics ours):

"Treating first of the facts above set forth as establishing or failing to establish the public service character of applicant, it may at once be said that when it engaged to supply the town site and the succeeding City of Hemet with water for municipal and domestic purposes, and proceeded to do this thing, it became a public service corporation, at least in so far as the needs, present or future, of the growing City of Hemet were concerned. *But, of course, it does not follow, either in law or in reason, that because of this it had dedicated all its water to public use.* ***"

"It must in this be recognized that the Constitution of this State, and the Legislature in pursuance of it, has undertaken to put out of existence any and all private rights in the matter of the rental or sale of water. *So far as our Constitution and laws are concerned the State has done this thing.* There stands between it and its enforcement, so far as this Court is concerned, *only the Constitution of the United States*, which, as the supreme law of the land, is, whenever it speaks, the supreme law of this State.

"What is a public utility, over which the state may exercise its regulatory control without regard to the private interests which may be affected thereby? In its broadest sense everything upon which man bestows labor for purposes other than those for the benefit of his immediate family is impressed with a public use. No occupation escapes it, no merchant can avoid it. No professional man can deny it. * * * What differentiates all such activities from a true public utility is this, and this only: That the devotion to public use must be of such character that the public generally, or that part of it which has been served and which has accepted the service, has the right to demand that that service shall be conducted, so long as it is continued with reasonable efficiency under reasonable charges. * * *

"Our Constitution and our statutory definitions above quoted therefore must be construed as applying only to such properties as have in fact been devoted to a public use, and not as an effort to impress with a public use properties which have not been devoted thereto. For if the latter be the true construction of our Constitution and statutes, then manifestly in their operation they are void wherever they unjustly interfere with private property or private contractual rights by force of Article 1, § 10, and of the Fourteenth Amendment of the Constitution of the United States. If the first alternative be selected, then, for reasons already given, such parts of these properties as are affected by the contracts with these petitioners have not been devoted to public use and their private contractual rights must prevail."

In this case the Court referred to the previous case of *Marin Water & Power Co. v. Town of Sausalito*, 168 Cal. 587, in which the Court held that the sale of water by a Water Supply Company to a municipality under a contract was not a public service, although this water supply company was a public utility as to other service, and used the following language (p. 596) :

"We are of the opinion that such sale and delivery were no more a dedication of the water to a public use than would have been a similar transaction between the owner of surplus water and a corporation engaged in the distribution of water to a city. It has been held that the selling of water to a public service corporation does not make the persons using such water customers of the company that sold it, at an agreed price, to the distributing company. *Garrison v. North Pasadena Land, etc., Co.*, 163 Cal. 239. It is no doubt true that the plaintiff in this action is a public service corporation but it has not dedicated its water supply to the inhabitants of Sausalito nor to the city in the usual sense of the term. The relation of the plaintiff to the municipality as such is purely contractual, and it has no relation to the inhabitants or individual water users as such."

The doctrine of the California Supreme Court was adhered to in *Stratton v. the Railroad Commission*, 186 Cal. 119, holding that a mutual water supply company was not a public utility and in *Storey v. Richardson*, 186 Cal. 162, where the owner of the building furnished to his tenants, under a special contract and to the owner of another building, electricity.

Also, in

Newell v. Redondo Water Co., Cal. App.
...., 202 Pac. 914.

Stoehr v. Natatorium Co., 34 Ida. 217.

In *Nowata County Gas Company v. Henry Oil Company*, 269 Fed. 742, involving a contract between a gas producing company and a gas distributing company, the Court said (page 745) :

"It is well settled that the price fixed in a contract between a public service corporation and a customer or patron may be changed, and a different rate fixed, by a public service commission created under the police power of the state. This is true, even though such contract (as was the fact in this case) was in existence before the creation by the state of a commission authorized to fix rates to be charged by public service corporations or public utilities. (Citing cases).

"The order of the Corporation Commission of Oklahoma, under consideration, does not fix, nor purport to fix, a rate to be charged by the plaintiff as a public service corporation or public utility, and to be paid by the public; but, granting that it fixes a rate at all, it establishes a rate or price to be paid by the plaintiff to the defendant for gas furnished it by the defendant.

"Our attention has not been called to any decision by any court which holds that under the police power the state may create an administrative body or commission with authority to fix or establish prices to be paid by a public utility for things purchased and used by it, or, as in this case, for a commodity furnished by it to the public.

"It is unnecessary to consider the question above suggested, as the law of the State of Oklahoma conferring jurisdiction on the Corporation Commission over public utilities does not attempt to confer such authority. The statute (Section 2, Chapter 93, Session Laws 1913) reads as follows:

" 'The Commission shall have general supervision over all public utilities, with power to fix and establish rates and to prescribe rules, requirements and regulations, affecting their services, operation, and the management and conduct of their business.'

"Taken in connection with the other provisions of the statute creating the Commission and defining its

powers, it seems clear that the Legislature conferred, and only intended to confer, authority to fix the rates to be charged by a public utility and paid by its patrons for the thing furnished or the service rendered by it to the public."

In *Citizens Passenger Railway Co. v. Public Service Commission*, 271 Pa. St. 39, the Pennsylvania Supreme Court considered an application for a revision of rentals under a lease executed by a street railway company to another company which was operating thereunder, these leases having been executed prior to the passage of the public utility law. The Court goes into the matter at considerable length and uses the following appropriate language (p. 55) (Italics ours):

" * * * No contract made by a utility is subject to a direct attack and revision, unless it is itself a rate contract; and no contract may be indirectly reviewed in such cases, unless it had some relation to one or more of the elements to be considered in revising the rate. So far as affects the fair value of the property of the company, these elements are set forth in Article 5, Section 20, of the Act (P. L. 1415); and probably nowhere else has the whole matter been more carefully considered or better expressed than in the opinion of our Brother Kephart (when on the bench of the Superior Court), in *Ben Avon Borough v. Ohio Valley Water Co.*, 68 Pa. Super. Ct. 561. We need not quote therefrom; it suffices that fixed charges for franchises and assets, long since acquired and now entitled to be retained only by continuing the payments provided in the lease thereof, are not among those elements; they do not help to determine the value of existing assets, or the cost of present operation; and hence, in the instance before us, *the rates to the public cannot be increased or diminished by reason of the fact that the rentals called for by the leases were unreasonable when made or are unreasonable now.* If this were not so, then the greater the fixed charges the greater would be the fare to be paid by the public, which would be directly in the teeth of the only reason on which such statutes can be sustained.

"Besides, neither the Commission nor the public has anything to do with the disposition of the rates which the utility is authorized to collect; nor is it any concern of either that the sum total thereof may not be sufficient to enable the operating company to pay its fixed charges and maintain or extend its service and facilities. The company is entitled to receive a reasonable return for the service it furnishes, and no more; the public is entitled to receive an adequate return for the reasonable rates it pays, and no more. Beyond making sure of these two things, the statute does not vest a greater power in the Commission, so far as the matter under consideration is concerned. It has ample authority to see that its orders, as to service and facilities, are fully complied with by the Philadelphia Rapid Transit Company; if the effect of so doing is that the latter's stockholders receive no return on their investment, because of the necessity for compliance with the terms of the leases, this concerns them alone, and not complainants or the public. Moreover, if the statute gives to the Commission the power to reduce these rentals, it may also increase them, a conclusion which would be a great surprise to everybody, and against which, if decreed, these interveners would be among the first to complain. As the matter now is, the law gives neither right, and hence the Commission should have at once halted this attempt to induce it to exceed its powers."

It only remains to briefly refer to four cases which may be cited in favor of the contention that the service here involved is a public utility service. These cases are the following:

Clear Creek Oil and Gas Company v. Fort Smith Spelter Company, 148 Ark. 260, which involved a contract made by a supplying gas company with a smelter. This case is clearly distinguishable from the case here involved on two grounds: *First*, the service there rendered was to the public; the smelting company did not

acquire the gas for purposes of re-sale but for its own use. It was as much a part of the public as any other consumer. *Second*, the Company supplying the gas possessed the power of eminent domain and the contract was entered into in the light of the fact that the Company intended, and the parties in fact contemplated, that it should exercise this right of eminent domain. The appellant here is a foreign corporation and under Section 11 of Article 12 of the Arkansas Constitution could not under any circumstance exercise the right of eminent domain.

The case of *North Carolina Public Service Company v. Southern Power Company*, 282 Fed. 837, was decided almost solely upon the proposition that the company in question possessed the power of eminent domain which, as we have above pointed out, is expressly withheld from appellant. Moreover, one of the judges indulged in a most vigorous dissent which we commend to the consideration of the Court.

In the case of *Oklahoma Gas & Electric Company v. Oklahoma Natural Gas Company*, . . . Okla. . . . ; 205 Pac. 768, the Court refused to grant a writ of prohibition to prevent the Corporation Commission from considering contracts in existence between certain distributing and producing companies, laying down the somewhat doubtful principle, at least as applied to the facts to this case, that contracts of a public utility which disabled it from performing its duties to the public when that condition was established might be subject to the control of the Commission. But that is not the question involved here. There is no contention that the appellant will not be able to discharge its duties to the public. If these contracts continue in force, the only effect will be that the revenues of the appellant will be reduced; that having made

a contract which it regarded as wise at the time, conditions have changed so that if it were now asked to enter into such an arrangement it would not do so.

As we have above pointed out, in no case would compliance with the contract affect the duties of the utility to the public; even bankruptcy or receivership would not do so. Bankruptcy or receivership might destroy this particular corporate organization, but the physical structure and physical assets of the corporation in whose hands they came would be as much charged with the public duty in those hands as in the hands of the previous owner; in fact, the whole purpose of this entire proceeding, as we have above pointed out, is to induce the Court to relieve the appellant from what it now conceives to be improvident contracts. The law both before and since the enactment of public utility statutes meets this situation. The contract having been made, the contractor must perform its obligations even to the point of being driven into insolvency.

In this connection it is not inappropriate to call the attention of the Court to the very recent decision of the Oklahoma Supreme Court in the case of *Oklahoma Natural Gas Company v. Corporation Commission*, 211 Pac. 401 (Advance Sheets). In that case the Chickasha Gas & Electric Company, a public utility in the City of Chickasha, instituted proceedings before the Commission to compel the Oklahoma Natural Gas Company, a public utility engaged in supplying gas in between thirty-five and forty cities and towns in Oklahoma, to supply the Chickasha Company with gas. The Oklahoma Supreme Court held that the Oklahoma Natural Gas Company could not be held as having undertaken to furnish gas to cities and towns indiscriminately, that it had the right to select the towns which it would in fact serve. In short,

it was in the same position as the Arkansas Natural Gas Company at the time it entered into the contracts here involved with the distributing companies. It is true that this particular case did not discuss the question as to whether contracts of this kind between two public utilities embraced a service to the "public" as that term is used in the Public Utility Act, but the case does distinctly hold that the producing company could not be compelled to supply the distributing company except at the producing company's option, and this necessarily destroys the whole basis that a public service is involved, because if a public service is involved its rendition may be compelled. If the service is a public one the utility may not select its consumers; if it is a private service, it may. The very existence of the power of selection repels the idea that the service can be public. The Court said (p. 402):

"The appellant has never professed or undertaken to furnish gas to cities and towns or communities indiscriminately. It serves approximately forty cities and towns in the state, all of which it has served for years, and to these it owes the public duty of continuing the service. It was for the sole purpose of obtaining gas with which to supply those it had undertaken to serve that it constructed its pipe line to the Duncan field. The appellant has never supplied the Chickasha Gas & Electric Company with gas and has never undertaken or agreed to do so; it has not a franchise in the City of Chickasha, and has never professed to serve the inhabitants thereof. To the contrary, it has steadfastly refused to furnish gas to appellee Chickasha Gas & Electric Company, and has consistently refused to extend its profession or undertaking so as to embrace additional cities, towns, or communities which it had not theretofore undertaken to serve.

"The authorities are harmonious in holding that one enters the public business by professing or undertaking to serve the public, and that his public

obligation is limited by the extent of his profession. Thus in Wyman on Public Service Corporations, Vol. 1, Sec. 250, it is said:

"‘Public profession not only establishes public obligation, but it largely determines the extent of the public duty. Just as people cannot be forced to serve unless they have made public profession, so they cannot be forced to serve beyond what their profession covers.’"

"So the primary question is what the profession of the appellant necessarily covers; and this is a question of fact, rather than of law."

"The appellant has undertaken to serve the *inhabitants* of certain cities, towns, and communities within the state, and to them it owes the duty of furnishing adequate service, and may be required within reasonable limitations to serve all *inhabitants* thereof who may apply. *Oklahoma Gas & Electric Co. v. State*, (No. 12516, Okla. Supp.), 209 Pac. 777, not yet officially reported; *New York & Queen's Gas Co. v. McCall*, 245 U. S. 345, 38 Sup. Ct. 122, 62 L. Ed. 237; *Lukrawka v. Spring Valley Water Co.*, 169 Cal. 318, 146 Pac. 640, Ann. Cas. 1916D, 27; *Public Service Corporation, et al. v. American Lighting Co.*, 67 N. J. Eq. 122, 57 Atl. 482; *Zeilda Forsee Inv. Co. v. St. Joseph Gas. Co.*, 196 Mo. App. 371, 195 S. W. 52; *Minneapolis General Electric Co. v. City of Minneapolis*, (C. C.), 194 Fed. 215; Wyman on Public Service Corporations, Sec. 797. (Italics ours.)

"But the appellant has not undertaken or professed to serve the City of Chickasha, neither does it profess to serve the state at large. The fact that it is a public utility does not necessarily cast upon it the duty of serving the public at large. This duty is not to all men, but to a certain public limited by its profession. Wyman on Public Service Corporations, Sec. 344; and, while the Corporation Commission may within constitutional and reasonable limitations compel appellant to extend its service within the boundaries of those cities it is now serving, or those it may undertake to serve, it is without power or authority to compel appellant to serve a

city not included within its profession of service. To compel the appellant to extend its service to a city, town, or community it has not undertaken or professed to serve, and which it does not desire to serve, is tantamount to an appropriation of private property for public use without just compensation. *Atchison, T. & S. F. Ry. Co. v. Railway Commission of California*, 173 Cal. 577, 160 Pac. 828, 2 A. L. R. 975; *State ex rel. Ozark Power & Water Co. v. Public Service Commission of Missouri*, 287 Mo. 522, 229 S. W. 782. While the appellant is employing its resources and property in a public service, it must be remembered that these still remain its private property, and that the public cannot assume the role of general manager, and require such property to be used in a service to which the owner has not voluntarily dedicated it. *Interstate Commerce Commission v. Chicago Great Western R. Co.*, 209 U. S. 108, 28 Sup. Ct. 493, 52 L. Ed. 705."

In *German Alliance Insurance Company v. Lewis*, 233 U. S. 389, this Court held that a state might regulate the rates for fire insurance even though the public had no absolute right to demand that it be served by a particular company. This case can have no application to the case at bar for two reasons: In the first place, as we have pointed out, on no proper interpretation of the statute, can it be held that the Legislature intended to vest in the Commission supervision over contracts between a producing and a distributing company. In the second place, the *German Alliance* case clearly indicates that there must be some element of service rendered by the corporation subject to the regulation to the public, that is, to the ultimate consumer. To make the doctrine of the *German Alliance* case analogous to the case at bar it would be necessary to consider a statute which regulated not the rates which insurance companies should charge to the insured, but the rates which they should charge between themselves for re-insuring each

other's risks which, as the Court knows, is a common practice between insurance companies. If a case of the latter kind were before this Court it would doubtless say, as has been said in the decisions which we have above quoted, that so long as the rates charged to the public by the insurance companies were reasonable, it was no concern of the public as to what arrangements they made between themselves as to the manner in which they should divide the rates exacted from the public.

We think we have clearly demonstrated in this section of our argument the following:

First: That the act in question does not by its terms or intent affect arrangements which may be made by one public utility company with another or the rates which a producing company may charge a distributing company for gas.

Second: That the Legislature could not, if it would, constitutionally, affect a situation of this kind.

These two principles are bottomed upon the proposition that the Legislature may not in this manner regulate property which is not in fact devoted to a public use; that the supply of a commodity by a corporation, whether or not a public utility, to another corporation for re-sale or re-distribution is not a public service, and that the public being at all times entitled to insist upon receiving service at reasonable rates is in no wise concerned with these intercorporate arrangements. In addition, there is the fact which seems to have been regarded by some courts as of importance, although we do not deem it controlling, that in this particular case the appellant, being a foreign corporation, could not exercise the power of eminent domain and hence cannot bottom its claim upon that right.

IV.

Even if such a contract could be abrogated, under ordinary circumstances, regulation of the rates charged by appellant to the distributing companies, Little Rock Gas & Fuel Company, and Consumers' Gas Company, by the Arkansas Railroad Commission, would have constituted an unreasonable burden placed by the State of Arkansas upon interstate commerce. Congress has not exercised its power over interstate commerce in gas. There is, therefore, no authority competent to abrogate the contracts.

The answers of the distributing companies alleged that the Commission had no jurisdiction or power over rates between appellant and them, and that the legislature could not constitutionally confer that power (Rec. 84, 94).

We have already shown that the business of furnishing gas to a distributing company differs very materially from the distribution of gas to ultimate consumers. We are convinced that the sale of gas to a distributing company does not, in the legal acceptation of the term, constitute a public service at all. As an incident of this proposition, it follows that a contract between a producing company and a distributing company does not require regulation.

Akin to the inquiry which is referred to, is the question as to whether the State of Arkansas may, without offending the United States Constitution, interfere with the price at which the distributing companies have agreed to purchase gas brought to them from outside the State of Arkansas by the Arkansas Natural Gas Company.

All of the fundamental principles which control such an inquiry have been definitely fixed by this Court. In

the *Minnesota Rate Cases*, 230 U. S. 352, it was settled that even though commerce be interstate, there are various features of such interstate commerce which admit of regulation by the states unless and until jurisdiction has been assumed by the Congress of the United States. Congress has deliberately refrained from taking any jurisdiction with respect to interstate commerce in gas.

It has been further definitely settled by this Court that the sale in one state of gas produced in another, constitutes interstate commerce. (*Public Utilities Commission of Kansas v. Landon*, 249 U.S. 236). In that case the receivers of the Kansas Natural Gas Company sought to have the commission raise the rates charged by distributing companies to the ultimate consumers so that the divisional proportion of such rates paid to the receivers in charge of the pipe line company would be compensatory. The Commission granted the application only in part, and the receivers brought an action in the United States Court to enjoin the enforcement of the rates. The lower court held that as the gas supplied to the distributing companies had its origin in another state, the Commissions were without jurisdiction to fix the rates of distributing companies to the consumers, and hence the Court granted the injunction. The Supreme Court of the United States, however, reversed the decree upon the ground that there were no subsisting contracts between the distributing companies and the receivers, and, hence, that the fixing of rates to the ultimate consumers had no effect, direct or indirect, upon the rates received by the receivers of the company engaged in interstate commerce in gas.

The language used by this Court in reaching that conclusion is illuminative upon the question under consideration and has been accepted by the bench and bar almost unanimously as a clear indication that a state cannot con-

stitutionally regulate the rates for gas from without the state, charged by the producing company to the distributing company. The Court said, (p. 245):

"That the transportation of gas through pipe lines from one state to another is interstate commerce may not be doubted. Also it is clear that as part of such commerce the receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interference by the state. *American Express Co. v. Iowa*, 196 U. S. 133. *Oklahoma v. Kansas Natural Gas Co.*, 221 U. S. 229. *Haskell v. Kansas Natural Gas Co.*, 224 U. S. 217."

The Court then goes on to consider the question whether the state might constitutionally regulate the rates charged by the local distributing companies for such gas.

It was always supposed by the bench and bar that the Court intended to express its view that the fixing of rates to the distributing company would have been an unreasonable interference by the state, and regarded the only debatable question in the case to be the question as to whether the fixing of rates charged by the local distributing companies was also an unreasonable interference by the state.

This common sense interpretation of the Court's language in the *Laudon case* was corroborated when this Court handed down its decision in *Pennsylvania Gas Co. v. Public Service Commission*, 252 U. S. 23. There the producing company served the ultimate consumers directly. It attacked the fixing of rates by the State of New York to these ultimate consumers as unconstitutional in view of the fact that the gas sold to the ultimate consumers was transported by it from Pennsylvania. This Court concluded that while the distribution of the gas to the ultimate consumers was undoubtedly interstate commerce, (see *United Fuel Gas Co. v. Hallanan*, 257 U. S.

277), it was still of such a character as to be subject to regulation by the state until Congress took jurisdiction. The Court said (p. 29) :

"The general principle is well established and often asserted in the decisions of this Court that the state may not directly regulate or burden interstate commerce. That subject so far as legislative regulation is concerned, has been committed by the Constitution to the control of the Federal Congress. But while admitting this general principle, it, like others of a general nature, is subject to qualifications not inconsistent with the general rule, which are now as well established as the principle itself.

In dealing with interstate commerce it is not in some instances regarded as an infringement upon the authority delegated to Congress, to permit the states to pass laws indirectly affecting such commerce, when needed to protect or regulate matters of local interest. Such laws are operative until Congress acts under its superior authority by regulating the subject matter for itself."

We thus start with the proposition that permitting the regulation of interstate commerce by the states is the exception and not the rule. The burden is upon him who seeks to uphold state regulation of interstate commerce, to show what special considerations require state action. The Court in the *Pennsylvania* case found that these special considerations existed in the case of the retail sale of gas to ultimate consumers by means of mains and service pipes laid through the streets and public places of a city, saying (p. 30) :

"The thing which the state Commission has undertaken to regulate, while part of an interstate transmission, is local in its nature, and pertains to the furnishing of natural gas to local consumers within the City of Jamestown, in the State of New York. The pipes which reach the customers served are supplied with gas directly from the main of the company which brings it into the state, nevertheless the service rendered is essentially local, and the sale

of gas is by the company to local consumers who are reached by the use of the streets of the city in which the pipes are laid, and through which the gas is conducted to factories and residences as it is required for use. The service is similar to that of a local plant furnishing gas to consumers in a city."

In view of the *Pennsylvania* case, the burden rested upon the Arkansas Natural Gas Company in this proceeding to show that regulation of the rates to the distributing companies was "needed to protect or regulate matters of local interest." Counsel for the Arkansas Natural Gas Company admit, on page 57 of their brief, that they assumed because of the many local conditions affecting the sale and disposal of the gas, the rates were subject to state regulation, and accordingly, no evidence was introduced to show any varying conditions affecting the supply of gas that required local legislation with respect to its sale to the distributing companies. In view of this frank admission, and of the burden which clearly rested upon appellant to make such a showing, it seems that little need be said upon the particular circumstances of this case as bearing upon the necessity for local regulation. The same considerations which brand the business of furnishing natural gas to consumers as a public profession but which indicate that the furnishing of gas to a distributing company is a private business, compel the conclusion that even if furnishing gas to a distributing company be held to be a public service, it is not so local in its character as to require regulation by the state of rates for gas so supplied in interstate commerce.

It is idle to say that the activities of the Arkansas Natural Gas Company should be treated as a whole. That is a Utopian conception, much to be desired but utterly without the bounds of possibility. Under the present law of Arkansas, the activities of the Arkansas Natural Gas Company are subject to regulation by the Railroad

Commission and by the councils or governing bodies of the municipalities which it serves directly; and in addition a far more significant feature is the regulation by the State of Louisiana, inaugurated by its Constitution of 1921, of the service to consumers now rendered within that state by the Arkansas Natural Gas Company. (Rec. 135, 137, 138 and 150.)

Appellant has thus failed to show local conditions requiring state regulation of interstate commerce in this particular case.

We refer this Court to two recent decisions of United States District Courts directly in point, which follow the language of the decisions of this Court and hold in able and well argued opinions that the interstate sale of gas by producing companies to distributing companies is without the province of state action. The cases are:

Central Trust Co. v. Consumers Light, Heat & Power Co. (District Court, Kansas, First Division, June 15, 1922, 282 Fed. 680), decided by Pollock, J., and

Missouri v. Kansas Natural Gas Co. (District Court W. D. Mo. W. D., June 30, 1922, 282 Fed. 341), decided by Van Valkenburgh, J.

The appellant cites in opposition to these authorities, which seem so sound, one case which may be regarded as in direct conflict with the principles here contended for. (*State ex rel. Helm v. Kansas Natural Gas Co.*, 111 Kan. 809.) That case was decided by the Kansas Supreme Court on July 8, 1922, and refers to Judge Pollock's opinion in *Central Trust Co. v. Consumers Light, Heat & Power Co.*, 282 Fed. 680, *supra*. We concede that whatever weight the authority has, it is opposed to us.

The other cases cited by the appellant, however, are without force in the present discussion. They are the following:

Port Richmond Ferry v. Hudson Co., 234 U. S. 317.

Wilmington Transportation Co. v. California Railroad Commission, 236 U. S. 151.

Transportation Co. v. Parkersburg, 107 U. S. 691.

The *Port Richmond* case involved an interstate ferry transporting foot passengers across a river. The act authorizing the Freeholders to pass the regulatory ordinance was passed in 1848, and a similar act was sustained by the New Jersey State Court in 1853. The case is in direct harmony with the *Pennsylvania* case above referred to, and consisted of a simple regulation of the rates for interstate service to an ultimate consumer in a single state in the absence of congressional action. The Court adverted to the fact that for one hundred and twenty-five years ferries had been treated by the states as matters of purely local concern, during all of which time their tariffs had been regulated by the states and no one had seen fit to take the untenable position that the states were powerless. The Court limited the rule to local ferries as a means of transit from shore to shore. The Court placed the regulation of such ferries in the same category with quarantine and pilotage laws, matters that were essentially local.

The *Wilmington* case involved a contention so untenable that it is hardly an authority for any proposition other than that the courts will exercise common sense in their decisions. It involved the rates for transportation from the California mainland to Santa Catalina Island, both termini being within the County of Los An-

geles, Cal. The island happened to lie far enough off shore so that the case involved the traversing of a short stretch of the high seas without touching any other port, or transferring passengers or freight to any other vessel. The navigation on the high seas was merely incidental to the real purpose of the voyage, which was to ply between two ports in the same county. The carrier contended that it was thus engaged in foreign commerce and its rates immune from regulation by the states. The contention was not sustained. This Court likened this case to local ferries, pilotage and quarantine regulations.

The *Parkersburg* case involved a charge for the use of a wharf, and is one of the many cases which yield to the states the rights of wharfage charges and of making pilotage and quarantine regulations.

Counsel for appellant seem to prefer the reasoning in the opinion given in the *Pennsylvania* case when before the Court of Appeals of the State of New York (225 N. Y. 397) to the opinion in this Court, and have laid great emphasis upon the point that one state only is here involved. While that was true in the *Pennsylvania* case, the argument, even if sound, has no application here because of the fact that gas produced by the Arkansas Natural Gas Company is sold not only in Arkansas but also in Louisiana.

Counsel for appellant argue that the facts disclosed by the record in this case show that the business of the Arkansas Natural Gas Company is so completely local to Arkansas that it admits of state regulation. The decisions of this Court and the lower federal courts disclose that there are numerous pipe line companies doing business in a number of the states situated exactly similar to that of the Arkansas Natural Gas Company. A decision that the business of that company in this case is within the power of regulation by the state will in-

evitably lead to the conclusion that the business of all other pipe line companies over the country similarly situated is also subject to regulation by the various states in which they do business, and thus the result which should be reached would be at war with and in the teeth of previous decisions by this Court on that subject.

V.

Assuming that such contracts are subject to abrogation by the state authority, nevertheless the Commission was correct in refusing to abrogate them in this case, because the Legislature withheld such power from the Commission by a part of Act 443. That part of Act 443, prohibiting the Railroad Commission from modifying or impairing existing contracts for supplying gas to persons, firms, corporations, municipalities, or distributing companies is constitutional.

Attorneys for appellant contend that that part of Act 443 prohibiting the Railroad Commission from modifying or impairing existing contracts for supplying gas is unconstitutional and void and in contravention of the 14th Amendment to the Constitution of the United States, in that the Legislature has singled out the Arkansas Natural Gas Company, appellant herein, and imposed restrictions upon the Railroad Commission in exercising the power delegated to it to investigate and fix reasonable rates for services rendered, that were not imposed in ascertaining and fixing reasonable rates for other utility companies.

Attorneys for appellant contend that that part of the act above referred to applies only to the existing contracts of the Arkansas Natural Gas Company, and is applicable to none other.

We start out with the presumption indulged in by the courts in favor of the constitutionality of a statute. The degree and extent of that presumption is tersely stated in 12 *Corpus Juris*, Sec. 222, p. 794, as follows:

"As to the degree and extent of this presumption, the rule, as variously stated, is that every reasonable presumption will be made in favor of the validity of a statute; that all fair intemduits should be indulged in favor of the constitutionality of a duly enacted statute; that there is a strong presumption in favor of the validity of a statute; that before an act will be declared unconstitutional it must clearly appear that it cannot be supported by any reasonable intendment or allowable presumption; and also that doubt, a fair doubt, a serious doubt, any, and all, doubts, and every reasonable doubt as to the constitutionality of a statute will be resolved in favor of its validity; and that a statute will be upheld by the courts unless it is clearly shown to be unconstitutional, or is shown to be unconstitutionally in conflict with some constitutional provision."

See, also, 25 *Ruling Case Law*, Sec. 243, p. 1000.

. . . and

6 *Ruling Case Law*, Sec. 77, p. 78.

The case of *St. L. S. W. Ry. Co. v. Arkansas*, 235 U. S. 350, is directly in point. In that case Mr. Justice Pitney said (p. 369):

"No canon of construction is better established or more universally observed than this, that if a statute will bear two constructions, one within and the other beyond the constitutional power of the law-making body, the courts should adopt that which is consistent with the Constitution, because it is to be presumed that the Legislature intended to act within the scope of its authority. *United States v. Coombs*, 12 Pet. 72, 76; *Grenada County Supervisors v. Brogden* (*Grenada County v. Brown*), 112 U. S. 261, 269; *Japanese Immigrant Case (Yamataya v. Fisher)*, 189 U. S. 86, 101. It hardly needs to be said that the Supreme

Court of Arkansas recognizes and applies this fundamental rule of construction. *State v. Lancashire Ins. Co.*, 66 Ark. 466, 477; *Waterman v. Hawkins*, 75 Ark. 120, 126; *State v. Moore*, 76 Ark. 197, 201."

The same cardinal rule of construction, differently stated, is that a statute must be so construed, when reasonably possible, as to uphold its validity. That rule is well stated in 12 *Corpus Juris*, Sec. 220, p. 787, as follows:

"When reasonably possible, a statute must be so construed as to uphold its validity. Indeed, a statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts on that score. In other words, in testing the constitutionality of a statute, the language must receive such construction as will conform it to any constitutional limitation or requirement, if it is susceptible of such interpretation, and the statute and the constitutional provisions must be read together and so harmonized as to give effect to both, when this can be consistently done. If a statute is susceptible of two constructions, one of which will render it constitutional, and the other unconstitutional, it is the duty of the court to adopt that construction which, without doing violence to the fair meaning of the language, will render it valid. This rule is based on the presumption that the Legislature intended to act within the scope of its constitutional powers, and to enact a valid and effective statute."

The determination of the constitutionality of Act 443 of the Acts of Arkansas of 1921 depends upon the construction to be given to its language, which is copied in full at pages 40-42 of appellant's brief.

Attorneys for appellant argue that the clause withholding from the Arkansas Railroad Commission the jurisdiction or power to modify or impair existing contracts applies solely to the contracts of the Arkansas

Natural Gas Company, appellant herein. That clause is as follows:

"Except that the Arkansas Railroad Commission shall have no jurisdiction or power to modify or impair any existing contracts for supplying gas to persons, firms, corporations, municipalities, or distributing companies, and such contracts shall not be affected by this act or the act of which this is an amendment."

We submit that a fair construction of this phrase in the act does not lead to that conclusion.

The exact scope and extent of Act 443 became apparent as soon as the circumstances surrounding its enactment are examined.

When the proceedings before the Corporation Commission were instituted, Act 571 of the General Acts of Arkansas for the year 1919, was in force. That act conferred upon the Commission general jurisdiction over utilities operating both outside of municipalities and within municipalities. During the pendency of the proceedings before the Commission, the Legislature of the State of Arkansas passed Act 124 of the General Acts for the year 1921, under which jurisdiction over utilities operating within municipalities was transferred to the governing boards of those municipalities, and jurisdiction over utilities operating without municipalities was conferred upon a board similar to the old Corporation Commission but herein denominated the "Railroad Commission."

Immediately after the adoption of such act two defects therein became apparent: *First*, there was no provision therein which would have saved the proceedings and testimony which had been taken in the proceeding which is involved upon this appeal, for that proceeding

was one which concerned *rates* not only applicable outside of municipalities, but also within municipalities. There was no tribunal of the State of Arkansas with statutory authority to continue a proceeding which had both of these aspects.

The second defect was that the Legislature, while it had expressed its will, that existing contracts should not be impaired by any proceedings taken under said Act 124, had limited the class of contracts thus free from attack to contracts wherein a municipality was one of the actual contracting parties. The portion of the act upon this subject is Section 23, and reads as follows:

"Section 23. That nothing in this act shall deprive or be construed as depriving any municipality of the benefits or rights accrued or accruing to it under any franchise or contract to which it may be a party, and no Court exercising jurisdiction under this act shall deprive such municipality of any such benefit or right."

Confronted by these two defects, the Legislature passed a single act, which remedied them both, to wit: Act 443 of the Legislature of 1921, quoted on pages 40-42 of appellant's brief. It provided, in effect, that in spite of Act 124, which had separated utilities operating within and without municipalities, and had conferred jurisdiction over those operating within upon the governing boards of the municipalities, and over those operating without upon the Arkansas Railroad Commission, nevertheless certain numbered pending cases were transferred to the Arkansas Railroad Commission for decision and the making of such orders and rates as might be appropriate, "And such orders and rates as may be made by the Arkansas Railroad Commission in the said gas cases shall apply not only to the service outside of municipalities, but also to the service and rates for supplying natu-

ral gas within municipalities, or to distributing companies operating within such municipalities."

The amendatory act then proceeded to cure the inconsistency in the treatment of municipalities and companies supplying municipalities which had existed under Act 124 in its original form, and added the clause above quoted, *i. e.*, "except that the Arkansas Railroad Commission shall have no jurisdiction or power to modify or impair any existing contract for supplying gas to persons, firms, corporations, municipalities, or distributing companies, and such contracts shall not be affected by this act or the act of which this is an amendment."

Thus all of the external evidence as to the intention of the Legislature is in favor of giving to the clause depriving the Commission of power to abrogate contracts a broad and general application. We perceive no warrant for the conjecture of counsel for the appellant, on pages 50, 51, of their brief, that this part of the amendment to Act 124 was the outgrowth of passion and feeling.

It will be noted that Act 443, under consideration, did not deal solely with the disposition of the three numbered pending cases. That act provided that all records, papers, etc., under the control of the Arkansas Corporation Commission at the time of the passage of Act 124 should be turned over to the Arkansas Railroad Commission, and remain in its custody, and that all investigations, proceedings and hearings that were pending before the Arkansas Corporation Commission at the time of the passage of Act 443 should be transferred to the Arkansas Railroad Commission for such consideration, orders and determinations as might be made by it. There is no proof in the record that there were not pending before the Arkansas Corporation Commission investiga-

tions involving pipe line companies other than appellant herein and involving existing contracts between other pipe line companies and other distributing companies.

We have referred first to the external evidence bearing upon the true interpretation of the provision of Act 443, depriving the Commission of the power to impair contracts, because the appellant has been forced to rely solely upon evidence which is extrinsic to that clause.

There is not one word or letter within the clause under consideration which indicates that any limitation to contracts of appellant was intended by the Legislature. It provides "that the Arkansas Railroad Commission shall have no jurisdiction * * * to modify or impair any existing contracts * * * and such contracts shall not be affected by this act or the act of which this is an amendment."

It is idle to suggest that the words "such contracts" refer to any class of contracts less broad and all embracing than the class defined immediately above, *i. e.*, "any existing contracts."

Counsel for the appellant approaching the act with the conviction that its primary purpose was to discriminate against the Arkansas Natural Gas Company, instead of, as was the fact, to benefit the Arkansas Natural Gas Company by permitting it to proceed before a single tribunal with a proceeding which under the existing statutes should have been recommenced before two separate tribunals, argues that the remainder of Act 443 indicates that its application was intended to be special, and not general.

It is apparent from the above that the Legislature, by means of Act 443 intended to withhold from the Commission power to ignore existing contracts, either with municipalities or distributing companies furnishing mu-

nicipalities. It does not seem to be controverted that the Legislature had ample power to do so.

The rule is thus stated in the *Landon* case, 269 Fed. 423, at p. 432, as follows: (Italics ours).

“That rate contracts of public utilities are subject to legislative supervision and abrogation, except where the renunciation of such right by the state is evidenced by most clear and unequivocal terms, is well settled.” (Citing numerous cases.)

In this instance the Legislature clearly renounced the right to abrogate these contracts, and clearly announced that it had withheld the delegation of such authority from the Commission.

We earnestly submit that when the Legislature provided that “such contracts” should not be affected by this act, it meant all existing contracts, and not merely the existing contracts of appellant herein.*

Giving the act this reasonable construction, so as not to render it unconstitutional, disposes of appellant’s attack upon the constitutionality of the act under the Federal Constitution, because, if this limitation upon the authority of the Commission applies generally to all existing contracts for supplying gas to persons, firms, corporations, municipalities, or distributing companies, the act has not discriminated against appellant alone, but has merely provided a reasonable classification.

It is well settled, by the decisions of this Court, that the equal protection clause of the Fourteenth Amendment does not take from the State the power to classify, in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is done without any reasonable basis and is purely arbitrary.

In the case of *German Alliance Ins. Co. v. Lewis*, 233 U. S. 389, a legislative classification was held good in an

act that exempted farmers' mutual insurance companies from its scope.

In the case of *Fidelity Mutual Ins. Co. v. Mettler*, 185 U. S. 308, a penalty statute was upheld against life and health insurance companies, which was not applicable to fire, marine and inland insurance companies.

In the case of *Farmers, etc., v. Dobney*, 189 U. S., 301, a penalty statute was sustained against fire insurance companies only, which was not applicable to any other kind of insurance companies.

In the case of *St. Louis, Iron Mountain & Southern Ry. Co. v. State of Arkansas*, 240 U. S. 518, this Court upheld an act of the Legislature of the State of Arkansas requiring all railway companies operating roads one hundred miles and over in length to use crews of six men, and held that that classification was not arbitrary.

The case of *Heisler v. Colliery Co.*, decided in this Court November 13, 1922, ... U. S., (43 S. C. R. 83), upheld a police regulation under which anthracite coal was affected and no other kind.

The business of distributing gas is of such a peculiar nature that it is undoubtedly proper to pass police regulations as against that business. We could point out at length the peculiar nature of the gas business, and of the relations between producing and distributing companies, and between gas companies and their customers, which give a reasonable basis for this classification, but we conceive that counsel for appellant do not question the constitutionality of this act, as involving a reasonable classification, if it be determined that this statute applies to existing contracts of all gas companies, and is not restricted to contracts of appellant company alone.

It is argued (Appellant's brief, pages 48 and 49) that the intent to confine the prohibition against impairing

contracts to the pending cases is manifested by the provision that "From the decisions of the Arkansas Railroad Commission in such cases appeals may be prosecuted", and that "On the determination of such natural gas cases * * * the powers and jurisdiction of the Arkansas Railroad Commission to regulate these particular utilities and fix their rates *shall be such only as is conferred by other sections* of the Act of which this is an amendment." To a mind untinged by a sense of fancied injustice, it is evident that the Legislature in the part of its act above quoted was merely making it clear that no blanket dispensation had been given the Arkansas Natural Gas Company, so that upon a rehearing of the cases, in the event of a reversal upon appeal, or upon a new application, it might not escape the requirement of making applications in each one of the numerous municipalities in which it is doing business directly with the consumers, as well as before the Commission in the instances where it was serving patrons outside of municipalities.

It is to be noted that if the Legislature had sought to confine to the pending cases the operation of the prohibition against impairment of contracts it would have provided that upon the determination of the pending cases "the powers and jurisdiction of the Arkansas Railroad Commission to regulate these particular utilities and fix their rates shall be *extended so as to include all those* conferred by other sections of the Act of which this is an amendment." The Legislature, however, not desiring to extend the powers of the Commission with respect to these utilities, but to confine them still more closely, provided that "powers and jurisdiction of the Arkansas Railroad Commission to regulate these particular utilities and fix their rates shall be *such only as is*

conferred by other sections of the Act of which this is an amendment."

Again, both the external and internal evidence favor a general application of the words of the statute, and appellant must rely upon a biased conception of the external evidence to control the unfavorable internal evidence furnished by the words of the statute. Appellant is not only confronted by overwhelming internal and external evidence against the construction for which it contends, but also by the presumption against the Legislature's intention to enact a statute which appellant admits would be unconstitutional.

The very fact that appellant must devote nineteen printed pages to the demonstration of the proposition that the prohibition was aimed at it and not at all gas utilities is in itself an argument for the adoption of a construction of the Act which not only coincides with its strict letter, but renders it constitutional. We can conceive of no warrant for a court's straining to construct something unconstitutional out of a pronouncement of the Legislature. The presumption that the Legislature intended nothing unconstitutional not only compels courts to permit a wide latitude in legislative enactments, but also compels courts to adopt if possible an interpretation which will render the statute constitutional. Even where all evidence, external and internal, points to an unconstitutional construction of the statute, courts will strain to arrive at a constitutional interpretation. If such be the rule, the Court in this case would refrain from giving to the statute an unconstitutional construction, in the face of the internal and external evidence against it.

VI.

Even if the Commission had been lawfully empowered to regulate the rates charged by one public service company to others, and even if contracts therefor could constitutionally have been abrogated by the Commission, nevertheless the Commission is still without legislative authority to abrogate contracts. If part of Act 443 is unconstitutional, that part is inseparable, and the whole Act is therefore void. There is no other statute in Arkansas permitting the abrogation of contracts.

The answers of the distributing companies alleged that the Commission had no power to fix city gate rates because that was to all intents and purposes fixing rates within the cities (Rec. 85, 94), and was under Act 124 within the exclusive jurisdiction of the cities (Rec. 85, 94).

Appellant contends that that part of Act 443 that prohibited the Commission from modifying or impairing existing contracts with distributing companies is unconstitutional and void, and should be stricken from the act, and thus leave the rest of the act in force and effect and leave the Commission with power to ignore existing contracts.

Appellant cites some Arkansas cases involving acts where the unconstitutional part is clearly separable, and where it is plain that the Legislature would have passed the acts without the unconstitutional part. That is not the rule where the unconstitutional part of the act constitutes an exception or an exemption, because striking out the exception or exemption does not enforce the legislative will.

That proposition has been definitely and distinctly settled by the Supreme Court of the United States in sev-

eral cases. The case of *Connolly v. Union Sewer Pipe Company*, 184 U. S. 540, involved the Anti-Trust law of the State of Illinois which exempted agricultural products or livestock in the hands of the producer or agent from the terms of the act. This Court held the exemption a discrimination which was unconstitutional, but held that the unconstitutional portion of the act could not be eliminated without bringing those classes of persons which the Legislature intended to exempt within the prohibitions of the statute, and the Court held that therefore the entire act must be held invalid. Mr. Justice Harlan on this subject said (p. 565):

"If the latter section be eliminated as unconstitutional, then the act, if it stands, will apply to agriculturalists and livestock dealers. Those classes would in that way be reached and fined, when, evidently, the Legislature intended that they should not be regarded as offending against the law, even if they did combine their capital, skill or acts in respect of their products or stock in hand. Looking, then, at all the sections together, we must hold that the Legislature would not have entered upon or continued the policy indicated by the statute unless agriculturalists and livestock dealers were excluded from its operation, and thereby protected from prosecution. The result is that the statute must be regarded as an entirety, and in that view it must be adjudged to be unconstitutional as denying the equal protection of the laws to those within its jurisdiction who were not embraced by the ninth section."

The same thing is decided in the case of *Pollock v. Farmers Loan & Trust Company*, 158 U. S. 601, in which case it was held that part of an act was unconstitutional as imposing a tax on property, and that the unconstitutionality of that part of the act carried down the whole act. The Court in that case recognized the principle of the Arkansas cases cited by appellant to the effect that the same statute may be in part constitutional and in

part unconstitutional, and that if the parts are wholly independent of each other, that which is constitutional may stand, while that which is unconstitutional will be rejected, but held that rule did not apply in statutes where the different parts were so mutually connected with and dependent on each other as to warrant the belief that the Legislature intended them as a whole. The Court said that to hold otherwise in the instant case would be to substitute for the law intended by the Legislature one that it might never have been willing by itself to enact.

The question as to whether this statute is divisible or falls as a whole as being contrary to the Constitution of the United States is controlled by the decision of the Supreme Court of the United States. But the Supreme Court of Arkansas and the courts generally are agreed on this proposition.

In *State v. Gantz*, 124 La. 535, the Court tersely stated the rule as follows (p. 543):

"We will now discuss whether the illegal exemption, because illegally discriminative vitiates the whole statute. It does evidently. It is a criminal statute, as it defines a crime. By striking out the exemption as unconstitutional, it leaves subject to criminal prosecution those the Legislature expressly intended should be exempt. As to them it would be making that a crime which was never intended should be. The exemption renders it impossible to enforce the legislative will. The statute must be considered as a whole, and the intention as bearing on all its clauses. The character of the intention, its indivisible nature, affects the whole statute. It cannot be enforced."

In accord are the following cases:

Sprague v. Thompson, 118 U. S. 90.

Union County National Bank v. Ozon Lumber Co., 127 Fed. 206.

Chicago, M. & St. P. Ry. Co. v. City, 238 Fed. 384.

American Surety Co. v. Shellenberger, 183 Fed. 636.

The same thing was decided by the Supreme Court of Arkansas in *Ex parte Deeds*, 75 Ark. 542. In that case the state statute required peddlers to obtain a license but exempted resident merchants. The Supreme Court of Arkansas held that the exemption was discriminatory and in violation of the 14th Amendment of the Federal Constitution. The Court said (p. 545):

"It is urged, however, on behalf of the state, that the proviso may be stricken out, thus removing the conflict, and leave the remainder of the act unimpaired under the established rule that statutes constitutional in part only if separable and not dependent upon each other, will be held valid *pro tanto*. (citing cases relied on by appellant). But to strike out this proviso would leave the statute applicable to 'a resident merchant of said County' a thing which the legislature plainly did not intend to do."

The Court then quoted from *Connelly v. Union Sewer Pipe Co.*, 184 U. S. 540, and held the whole act void.

It is shown by the record in this case that more than 60 per cent of all of the gas sold by the Arkansas Natural Gas Company in Arkansas is sold through the two distributing companies involved herein. It was generally known, and developed in the hearing before the old Corporation Commission, that contracts existed between appellant pipe line company and distributing companies,

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and that those contracts provided for a division of collections and did not permit of city border rates. It was also generally known that the two distributing companies involved herein were contesting the attempt of appellant to establish its new schedule of rates which involved ignoring the contracts and fixing city gate rates. It was perfectly natural and entirely appropriate for the legislature in conferring power upon the Commission to fix gas rates to protect contracts that had been entered into prior thereto and which were existing at the time. It is inconceivable that the legislature would have passed Act 443 without the exception protecting existing contracts, because it is plain that the legislature intended to protect them. To eliminate that exemption and leave the rest of the act standing would be accomplishing exactly that which the legislature evidently did not intend to do and which it was strenuously trying not to do.

If the exemption clause is void then the whole Act must fall.

But counsel for appellant contend that even if the whole of Act 443 is held unconstitutional, power is conferred upon the Commission by Act 124 to fix city border rates to distributing companies. Originally cities and towns had jurisdiction over public utilities within their borders. That was changed by Act 571 of the Acts of 1919 under which the old Corporation Commission had the power to fix rates within and without municipalities. The people had a very different idea relative to what governmental agency should have the power to fix public utility rates. Cities and towns resented the taking from them of the right to control public utilities doing business within their limits. The returning to municipalities of their jurisdiction over public utilities was in the platform

of the prevailing candidate for Governor, and it was an issue in the election of members of the Legislature of 1921. By Act 124 the Legislature endeavored to return to the cities and towns their original power of dealing directly with the public utilities in their midst. That act zealously prohibited the Commission from exercising any jurisdiction as to any rate, charge, rule, regulation, order, hearing, investigation or other matters pertaining to the operation of any public utility within the limits of any municipality.

Section 5 of that act as amended (Sec. 3 of Art. 124) conferred jurisdiction on the Commission to various public utilities and contained the following proviso:

"Provided, however, that nothing herein shall vest said Commission with jurisdiction as to any rate, charge, rule, regulation, order, hearing, investigation, or other matter pertaining to the operation within the limits of any municipality of any street railroad, telephone company, gas company, pipe line company for transportation of oil, gas or water, electrical company, water company, hydroelectric company or other company operating a public utility or furnishing public service as to which jurisdiction may be elsewhere conferred in this act upon any municipal council or city commission; notwithstanding, however, the jurisdiction of the municipality as to the above matters within the limits of such municipality, the said Arkansas Railroad Commission shall have and is hereby delegated the authority and duty to require all utility companies now furnishing public service within the limits of any municipality to furnish and continue furnishing such service to such municipality, though the right of regulation of such utility as to rates and all other matters within such municipality is herein elsewhere conferred upon the municipal councils or city commissions subject to right of appeal to the courts."

Section 7 of that act as amended (Sec. 5, Art. 124) provides that no rate should be made or changed without

notice to the particular regulatory body as to such proposed action, "which regulatory body is either the Arkansas Railroad Commission or the municipal council or city commission, as the case may be, depending on the utility affected and the action proposed."

Section 8 as amended (See. 6, Act 124) first gave to the Commission general authority to establish rates and contained the following proviso:

"Provided, however, that nothing herein shall authorize said commission to make any rule, regulation, or order whatever to be effective within the limits of any municipality of this state with reference to any tariff, rate, toll, schedule, duty or action of any public service corporation, company or public utility operating within such municipality as a street railroad, telephone company, gas company, pipe line company for transportation of oil, gas or water, electrical company, for the generation or distribution, sale or supply of electricity for heat, light or power, water company or hydro-electric company, it being the intention of this act, hereinafter more particularly expressed, to confer upon the municipal councils and city commissions of this state, jurisdiction as to such matters, so far as same are effective within the limits of any municipality of this state."

Section 17 of Act 124, is a new section, and provides:

"The jurisdiction of the Municipal Court or City Commission of any municipality shall extend to and include all matters pertaining to the regulation and operation within the limits of any such municipality of any * * * gas company furnishing gas for domestic or industrial purposes, pipe line company for transportation, distribution or sale of * * * gas * * * within such municipality, * * * and it is hereby made their (municipalities') duty * * * from time to time to initiate, fix, promulgate, regulate, modify, amend, adjust, readjust, or otherwise make and determine fair and reasonable rates to be charged by all public utilities for furnishing public utility service within such municipalities * * *."

It is thus seen how particular the legislature was to take from the Commission any and all jurisdiction or authority of any character over any rates, rules or regulations affecting public utilities so far as it concerned business within cities and towns.

There is not one word in Act 124 which expressly gives to the Commission power or authority to fix city border rates as against distributing companies. A power of that sort cannot rest upon implication or inference. It must expressly and plainly appear in the act. It is also perfectly plain that Act 124 took from the Commission any power or authority over rates of public utilities within municipalities. Fixing a city gas rate for distributing companies is not only the foundation and basis of the rate within the city but it absolutely controls it. To illustrate: the Arkansas Natural Gas Company contends that it costs it 25 cents per thousand cubic feet to deliver gas to one of its own cities, and six cents for distributing it therein. Thus the cost to the city gate is more than 80 per cent of the entire cost. Therefore if the Commission fixes a city gate rate then it for all intents and purposes fixes the rate within the city. All that is left to the governing body within the city is to add the additional cost of distribution. It must be conceded that if the Commission has the lawful authority to fix a city gate rate then when the governing body within the city comes to the proposition of fixing a rate to be charged by the public utility to the consumers within the city, it must observe the city gate rate fixed by the Commission. That being true, the Commission in fixing the city gate rate has infringed upon the jurisdiction of the city council or other governing body of a municipality. The only way in which that could be avoided would be for the Commission to refrain from fixing a city gas rate and fix the percentage of division

between the two companies of the rate fixed by the city council.

The fixing of city gate rates is contrary to the intention and at war with the spirit of Act 124.

We therefore earnestly submit that if Act 443 falls, no power is left in the Commission to fix a city gate rate. That being true the Commission was right in refusing to fix city gate rates, the district court was right in refusing the injunctions on that issue, and this case should be affirmed.

VII.

Whatever may be the correct answers to the various points of practice and substantive law presented, the refusal of the District Court to permit the abrogation of the contracts, and to enjoin the rates existing thereunder, was correct, as a matter of equity, and should not be disturbed on appeal, for the record does not show irreparable injury, or the abuse of the discretion of the lower Court.

It is elementary that it was the duty of the Railroad Commission to consider the legislative act under which it was acting as valid and constitutional. Not being a judicial tribunal, the Commission should not be expected to pass on the constitutionality of any law or part thereof under which it is acting. The Supreme Court of Arkansas said in referring to the Railroad Commission in *Jones v. Cooper*, ... Ark. ..., 242 S. W. 550, *supra*, that none of its functions are strictly judicial. The act under which the Commission was operating commanded it not to ignore existing contracts, and that there was nothing for the Commission to do excepting to obey the mandate of the legislature. If appellant conceived that part of the act to be unconstitutional, it devolved upon it to test that question in some appropriate manner.

This bill being primarily an attack upon the constitutionality of that part of the act exempting existing contracts, then an interlocutory injunction is highly inappropriate, unless appellant showed that it would suffer irreparable injury, which was occasioned by the action of the Commission in refusing to ignore the contracts.

It is true that appellant alleged that the divisional contract rates prescribed in the contracts were confiscatory, and it is true that the District Court granted an injunction against appellant's burner-tip consumers. The assumption is fair that the Court found that the rates collected by appellant from its own consumers were confiscatory, but it also must be assumed that no such finding of confiscation was made by the Court relating to the divisional contract rates, because they were not enjoined. But aside from presumptions there is not only no proof in the record justifying the plea of confiscation under the divisional contracts, but none showing irreparable injury. The record is silent on the subject. While the rates charged by the Little Rock Company against its own consumers were the same as charged by appellant, there is no showing in the record that appellant's proportion thereof was so low as to amount to confiscation. But the proper inquiry here is not about confiscation. It is whether the record shows clearly that irreparable injury will result to appellant pending the hearing of this case, by reason of the refusal of the District Court to grant an injunction against the distributing companies.

But the injunction granted to appellant placed it in a position where it cannot claim irreparable injury. Appellant by the interlocutory injunction was given the right to fix rates to its own direct consumers at any sum it saw fit, and there is no showing in the record that it could not have fixed rates, and collected them, sufficient to provide an adequate return, notwithstanding its in-

ability to scrap the contracts. There is nothing in the record to show what rate the direct consumers of appellant could afford to pay, or what rate the traffic would bear, and in the absence of such a showing it cannot be said that appellant will suffer irreparable injury pending the final hearing. The fact that no higher rates were put in force by appellant against its own consumers can avail it nothing for it had the right to do so. In addition to that, the Little Rock contract itself provides for a method by which appellant can force a raise in the rates of the Little Rock Company as against its own consumers. The record shows that such raises were made from time to time. Appellant is protected against all losses due from abnormal leakage by the terms of both the Little Rock and Hot Springs contracts.

We repeat that this is purely a suit in equity attacking a part of Act 443 as unconstitutional, and the record does not show or present a case where irreparable injury will arise simply because the Commission refused to ignore the contracts. No injunction is needed to prevent fines and forfeitures because none are imminent. This Court is not concerned on this application for an interlocutory injunction with difficulties encountered by appellant in establishing a temporary satisfactory schedule of rates among its own direct consumers and of avoiding confusion occasioned by the existence of distributing contracts. Those questions should be appropriately solved on the final hearing when this case is presented on its merits. If Act 443 is correct in stating that the contracts are inviolable either because of a lack of constitutional power or as a reservation of such power, then the contracts are still good and appellant must suffer whatever loss it will entail by reason of any improvidence in the contracts.

It must be remembered that a public utility cannot secure relief in the courts on the ground of confiscation occasioned by a valid and binding contract, even when that contract is made with a municipal corporation. The courts place those contracts in the same category as private contracts, when the municipalities have been authorized to enter into them. Such contracts cannot be avoided by the public utility, even though the enforcement thereof may result in the bankruptcy of the public utility.

Lonoke v. Bransford, 141 Ark. 18;
Town of Pocohontas v. Central Power & Light Co., . . . Ark. . . ., 239 S. W. 1;
Columbus Ry. Power & Light Co. v. City of Columbus, 249 U. S. 399;
Southern Iowa Electricity Co. v. City of Chariton, 255 U. S. 539.

If that part of the act protecting these contracts is unconstitutional, and the other pre-requisites to the power of the Commission exist, then it was the duty of the Commission to have considered the premises, but it does not follow that it was the *duty* of the Commission to ignore those contracts, nor does it follow that it was the duty of the Commission to fix city gate rates. What the Commission should have done if it was permitted to ignore the contracts is as yet problematical.

But in any event there is no showing that its failure to act has of itself produced irreparable injury, or that there is any occasion for an interlocutory order against the distributing companies.

Section 266 of the Judicial Code provides for a temporary restraining order to be issued by one judge when irreparable injury is imminent. It therefore follows that no interlocutory injunction should be granted on the hearing unless irreparable injury is shown. This

principle is recognized in the case of *Dawson v. Kentucky Distilleries & Warehouse Company*, 255 U. S. 238, and where an interlocutory injunction had been issued under Judicial Code, Section 266, it was said that the restraining order issued in a purely private litigation between third parties in a County Court left the plaintiffs in the suits before the United States Court, "*subject to all danger of irreparable injury against which they had sought protection in the Federal Court.*" Thus there is clearly recognized the proposition that the object and purpose of the interlocutory injunction under Section 266 of the Judicial Code is to prevent irreparable injury or damage.

It is one of the elementary rules of the law of injunctions that an injunction is issued either to preserve the *status quo*, or in case of mandatory injunctions, to prevent irreparable injury, pending the hearing. The purpose of an injunction is to prevent injury, and in the absence of a showing of injury the injunction will not be granted. This is especially true of a mandatory injunction: the nature of the injunction sought in this case.

It is another elementary principle of the law of injunctions that a discretion exists in the trial Court as to whether or not it will grant an interlocutory injunction, and that a refusal of the trial Court to grant such an injunction will not be interfered with on appeal unless there has been a clear abuse of discretion. 14 *Ruling Case Law*, 312.

In *Trenton, etc., v. Board*, 229 Fed. (3d Ct. Ct. App.), 140, the Court said:

"This case comes before us on appeal from an order of the Court below refusing to issue a preliminary injunction against the Board of Public Utility Commissioners of the State of New Jersey, pending the hearing of the case. The grant or refusal of such injunction was a matter resting in the

sound discretion of the three judges who heard the application in the Court below. After a full discussion of the cause in this court we find no abuse of discretion in such refusal, and the decree will be affirmed. We refrain from any present discussion of the important questions here involved, holding our views in abeyance until the cause comes before us on final hearing."

In determining whether it is proper and appropriate to issue an interlocutory injunction, the trial Court weighs the comparative injury which might be sustained by the defendant if an injunction is granted and by the plaintiff if it is refused. Whenever it appears to the Court that a greater damage would likely be occasioned the defendant if the injunction is granted than will be occasioned the plaintiff if it is refused, it is the duty of the Court to refuse the injunction. *Russell v. Farley*, 105 U.S. 433; *Kryptok Co. v. Stead Lens Co.* (Eighth Circuit Court of Appeals), 190 Fed. 767.

In this case the granting of an interlocutory injunction means the scrapping of contracts between appellant and the two distributing companies that were deliberately entered into more than ten years ago and which have many years to run. Such an injunction would set aside temporarily these contracts and permit appellant to ignore them. Such relief would be extreme and certainly it was not an abuse of discretion on the part of the lower court to refuse an injunction under those circumstances. It must be remembered that if an injunction were granted and appellant allowed to charge a city gate rate against each distributing company, those distributing companies could not raise their own rates to their own consumers until they had gone through the machinery provided for before the city councils of the respective cities in which they are engaged in business. The situation that would be created by an interlocutory injunction would permit appellant to be free from its con-

tracts, and compel the distributing companies actually to pay more for the gas they received from appellant than they could receive for many months to come from their own consumers, and would thus be disastrous to the distributing companies. The equities are with the distributing companies. More damages are likely to be occasioned them by granting the injunction, than to appellant in refusing it. Certainly it appeals to one's sense of justice that solemn contracts should not be set aside on a hearing for an interlocutory injunction, and we submit that it is no hardship on appellant to delay until final hearing efforts to repudiate contracts that have been in force for more than ten years. Beyond that it is proper and appropriate for the grave questions involved herein, many of them being constitutional, to go through the ordinary processes of the federal courts than to burden this Court with them in this short cut appeal, which was not intended to be used for that purpose.

We respectfully submit that the order of the District Court denying the interlocutory injunction should be affirmed.

ASHLEY COCKRILL,
HENRY M. ARMISTEAD,
Solicitors for Appellee,
Little Rock Gas & Fuel Company.

MAX PAM,
HARRY BOYD HURD,
ASHLEY COCKRILL,
Of Counsel.

WILLIAM H. MARTIN,
Solicitor for Appellee.
Consumers' Gas Company.

LEWIS L. DELAFIELD,
E. J. DIMOCK,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

Office Supreme Court,
FILEDFEB 12 1922
WM. R. STANS

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ARKANSAS NATURAL GAS COMPANY,*Appellant,**v.s.***ARKANSAS RAILROAD COMMISSION, CITY OF PINE
BLUFF, TOWN OF SHERIDAN, TOWN OF ALEXAN-
DER, CITY OF BENTON, TOWN OF HASKELL, CITY
OF MALVERN, CITY OF ARKADELPHIA, TOWN OF
GURDON, CITY OF PRESCOTT, TOWN OF EMMETT,
CITY OF HOPE, TOWN OF GARLAND, TOWN OF
FOUKE, TOWN OF TRASKWOOD,***Defendants,**and***LITTLE ROCK GAS & FUEL COMPANY AND
CONSUMERS' GAS COMPANY.***Defendants-Appellees.*

**SUPPLEMENTAL BRIEF and ARGUMENT for APPELLEE
CONSUMERS' GAS COMPANY.**

WILLIAM H. MARTIN,*Solicitor for Appellee,**CONSUMERS' GAS COMPANY.***LEWIS L. DELAFIELD,
E. J. DIMOCK,
*Of Counsel.***

INDEX.

	PAGE
Brief and Argument.....	1
American Steel Foundries <i>v.</i> Tri-City Council, 257 U. S. 184.....	4
Arkansas Natural Gas Company <i>v.</i> Consumers Gas Company, 264 Fed. 804.....	4, 2
Duplex Co. <i>v.</i> Deering, 254 U. S. 443.....	4
Union Tool Co. <i>v.</i> Wilson, U. S. 66 L. E. 499	3
Worden <i>v.</i> Searls, 121 U. S. 14.....	4

IN THE
SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1922.

ARKANSAS NATURAL GAS COMPANY,
Appellant,

vs.

ARKANSAS RAILROAD COMMISSION,
CITY OF PINE BLUFF, TOWN OF
SHERIDAN, TOWN OF ALEXANDER,
CITY OF BENTON, TOWN OF HAS-
KELI, CITY OF MALVERN, CITY OF
ARKADELPHIA, TOWN OF GUR-
DON, CITY OF PRESCOTT, TOWN
OF EMMETT, CITY OF HOPE,
TOWN OF GARLAND, TOWN OF
FOUKE, TOWN OF TRASKWOOD,
Defendants,

and

LITTLE ROCK GAS & FUEL COM-
PANY AND CONSUMERS' GAS
COMPANY,
Defendants-Appellees.

**SUPPLEMENTAL BRIEF and ARGUMENT for
APPELLEE CONSUMERS' GAS COMPANY.**

A joint brief, statement and argument has been submitted on behalf of both appellees, Little Rock Gas & Fuel Company and Consumers' Gas Company. It is intended to cover all points they have in common. This pamphlet is devoted to a single

point which, in view of the fact that it involves transactions between the Arkansas Natural Gas Company and Consumers' Gas Company only, is argued by Consumers' Gas Company alone.

The Arkansas Natural Gas Company applied to the Arkansas Railroad Commission, "for a revision of its rates, filing with it a schedule of rates * * * wherein complainant * * * provided for a city border rate to be paid by distributing companies obtaining gas from it at the city gates". (Bill of Complaint, R. 22.)

There was in existence a contract dated January 30, 1911, with Consumers' Gas Company, a distributing company, under which rates payable to the Arkansas Natural Gas Company were established. (R. 4, 8, 53-63.)

There was also outstanding at the time of this application to the Commission, and in full force and effect, a final judgment of the District Court of the United States for the Western Division of the Eastern District of Arkansas, affirmed by the Circuit Court of Appeals of the United States for the Eighth Circuit, permanently enjoining the Arkansas Natural Gas Company "from changing the established rates under the terms" of said contract (Response of Consumers' Gas Company, R. 93-94; *Arkansas Natural Gas Company v. Consumers' Gas Company*, 264 Fed. 804.)

This permanent injunction against the Arkansas Company's changing the established rates under the contract was brought to the attention of the Commission prior to the hearing so that, under established principles, action of the Commission in revising the established rates would have been as much a contempt of the District Court as would have been the action of the Arkansas Natural Gas Company in revising them without com-

mission aid. (*Union Tool Co. v. Wilson*, — U. S. —, 66 L. E. 499.) The Commission, instead of being a party to any such contempt of Court, denied the application for a revision of rates. (R. 26.)

The Arkansas Natural Gas Company, then applied in this proceeding to the same District Court for the same district and division, for an interlocutory injunction against the Arkansas Railroad Commission and the Consumers' Gas Company to restrain them from enforcing rates established under the said contract and from interfering with Arkansas Natural Gas Company in installing other, higher and different rates. (Bill of Complaint, R. 32-33.)

In other words, the District Court was told that the Commission had obeyed the District Court's injunction and that as a penalty for this obedience the Commission should be ousted of whatever jurisdiction it had. Needless to say the Court refused (Order, R. 99). The Arkansas Natural Gas Company has appealed from the denial.

We do not ask Court or counsel to remain blind to the fact that the Appellant expects upon a final hearing to show what it has not shown here, i. e.: that since the filing of its answer in the suit resulting in the permanent injunction of the District Court, the Arkansas Public Utility Act has been passed and that therefore new facts have arisen which would avoid the effect of that injunction as *res adjudicata* in a new suit. But whether or not such Act at the time when it was passed had such effect, is a question for the Court and not for the Commission. If the hearing was held after the passage of the Act there is good ground for saying that the contract has been finally adjudged to be

inviolable at the hands of the Commission. (*Duplex Co. v. Deering*, 254 U. S. 443, 464; *American Steel Foundries v. Tri-City Council*, 257 U. S. 184, 201; *Arkansas Natural Gas Co. v. Consumers' Gas Co.*, 264 Fed. 804, 808.) If Commissions are to be told by Courts to examine into the merits of every injunction served upon them and to disregard all improvident ones under pain of loss of jurisdiction, we need expect no respect from Commissions for the Courts. (See direction of this court in *Worden v. Searls*, 121 U. S. 14.)

It is respectfully submitted that the outstanding permanent injunction upholding the contract with the Consumers Gas Company justified the District Court in refusing to issue a temporary injunction disregarding such contract, and that the order appealed from should therefore be affirmed as to the Consumers Gas Company.

WILLIAM H. MARTIN,
Solicitor for Appellee,
Consumers' Gas Company.

LEWIS L. DELAFIELD,
E. J. DIMOCK,
Of Counsel.

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W.M. G. STERS

IN THE
United States Supreme Court
OCTOBER TERM, 1921.

ARKANSAS NATURAL GAS COMPANY

Appellant.

v.

No. 500.

ARKANSAS RAILROAD COMMISSION et al.

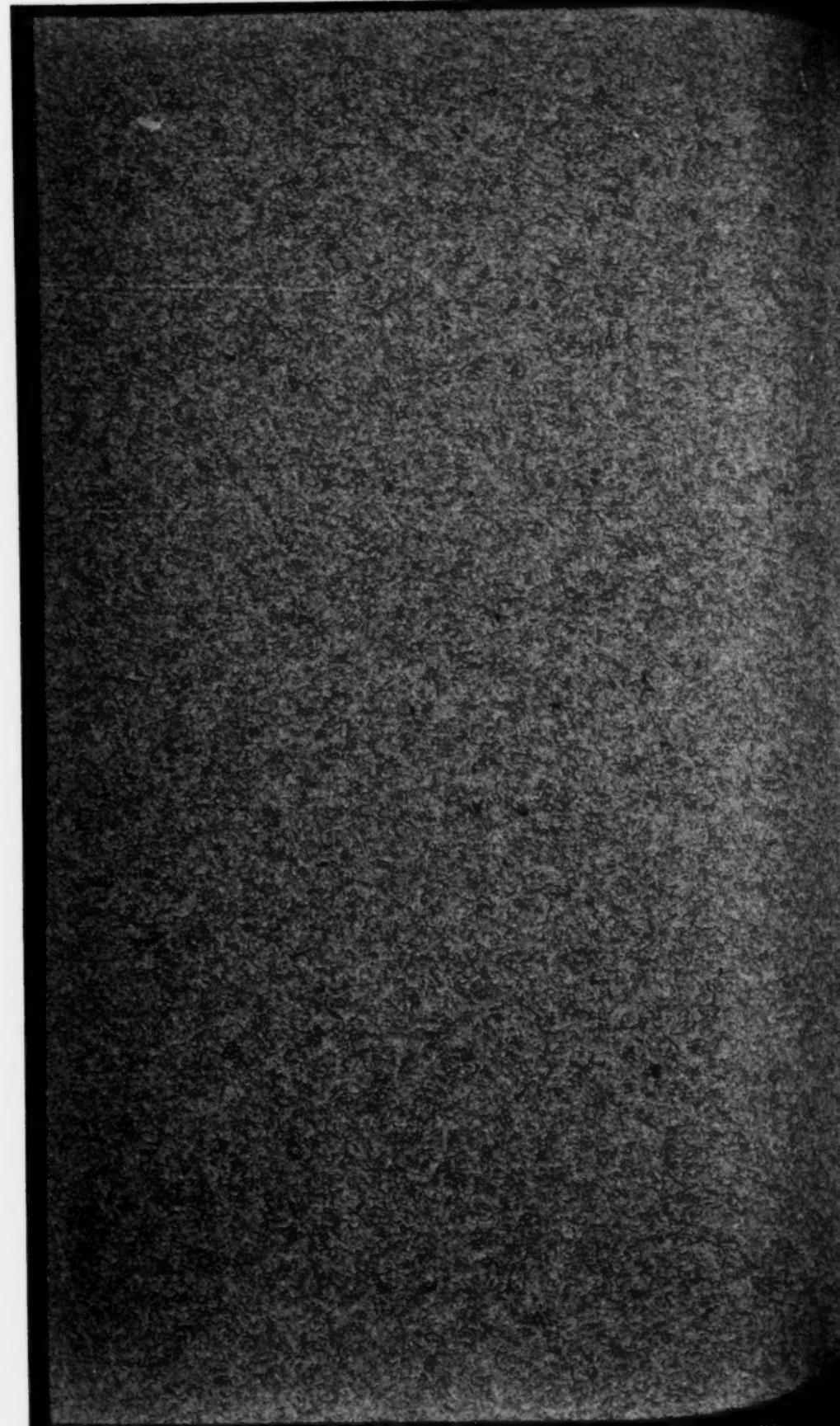
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE WESTERN
DIVISION OF THE EASTERN
DISTRICT OF ARKANSAS

MOTION TO ADVANCE

John M. Moore,

Attorney for Appellant.



IN THE
United States Supreme Court

OCTOBER TERM, 1922.

ARKANSAS NATURAL GAS COMPANY

Appellant,

v.

No. 500.

ARKANSAS RAILROAD COMMISSION ET AL

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE WESTERN
DIVISION OF THE EASTERN
DISTRICT OF ARKANSAS

MOTION TO ADVANCE.

Comes the appellant and moves the court to advance on the docket and expedite the hearing of this appeal, and for cause says:

1. This appeal is from an interlocutory order on a hearing in the district court, before three judges,

for a temporary injunction under the provisions of Section 266 of the Judicial Code in an action brought by appellant to enjoin the Arkansas Railroad Commission, one of the appellees, and the cities and towns made parties to said action, from maintaining in force and effect confiscatory rates in the several cities and towns in the State of Arkansas where appellant distributes natural gas direct to its consumers; and to enjoin the said Railroad Commission from maintaining in force and effect, under an unconstitutional State statute, the confiscatory divisional contract rates prescribed in contracts between appellant and appellees, Little Rock Gas & Fuel Company and Consumers Gas Company, for gas supplied by appellant to said companies, which are engaged in distributing natural gas to their respective patrons in the cities of Little Rock and Hot Springs, Arkansas; also to enjoin the Railroad Commission and said distributing companies from interfering with appellant's putting into effect city or town-border rates applicable to said distributing companies.

2. Appellant is engaged in the production of natural gas in the State of Louisiana, which it transports into the State of Arkansas and, as a public utility company, sells in the State of Arkansas to its patrons and to two other public utility companies which distribute

the gas acquired from it in the cities of Little Rock and Hot Springs, Ark., respectively. On December 31, 1920, the revenues derived from appellant's public utility business being wholly inadequate and insufficient to give it a reasonable return on the fair value of its property devoted to the public use, appellant made application to the Arkansas Corporation Commission, the body then authorized under the statutes of the State of Arkansas to make rates for public utility companies, for an increase of its rates and for the establishment of city-border rates for gas supplied by appellant to the distributing companies engaged in the distribution of natural gas in the cities of Little Rock and Hot Springs in the State of Arkansas, being the appellees Little Rock Gas & Fuel Company and the Consumers Gas Company.

Under legislation of the State of Arkansas, enacted subsequent to the filing of appellant's new schedule of rates and application for an increase of rates, jurisdiction to make and establish rates for appellant on its said application was transferred to the Arkansas Railroad Commission, which Commission denied appellant's application for an increase of rates and for the establishment of city-border rates applicable to distributing companies taking gas from it. Under the

laws of Arkansas the decision of the Railroad Commission was the final legislative act in the rate-making process.

The Commission denied appellant's application for the establishment of city-border rates applicable to distributing companies upon the ground that it was prohibited by a special act of the Legislature of Arkansas, being act number 443, approved March 25, 1921, enacted after appellant had made its application for increase of rates, from making rates for appellant that would modify or impair existing contracts between appellant and the said distributing companies. Appellant contends that said provision of said special act is unconstitutional and void, in that the prohibition in said act against impairing or modifying existing contracts between appellant and distributing companies was not made applicable to any other utility in Arkansas engaged in the natural gas or other public utility business, and as to appellant is discriminatory and void as denying it the equal protection of the laws and as taking its property for public use without just compensation.

The Corporation Commission, upon appellant's filing on December 31, 1920 a new schedule of rates, made an order suspending the operation of said rates

pending a hearing upon the reasonableness thereof, and declined to receive a bond as authorized by the statutes of the State and tendered by appellant to supersede said order, which bond would have put into effect the new rates. Pending a hearing on a petition for mandamus filed by appellant to compel the Corporation Commission to accept said bond, an act was passed by the Legislature of Arkansas, which was then in session, repealing the bond provision of the Corporation Commission law and, during the entire proceeding before the Corporation Commission and the Railroad Commission, appellant was required to maintain in force and effect the confiscatory rates for relief against which it had filed its new schedule of rates.

On the 18th day of February, 1922, after the decision of the Railroad Commission had been rendered, appellant filed its bill of complaint in the District Court of the United States for the Western Division of the Eastern District of Arkansas to enjoin the continuance in force of the old rates as being confiscatory, and to enjoin the Railroad Commission and said distributing companies from interfering with it in the establishment of city-border rates for all gas delivered by appellant to said distributing companies at the city borders of the cities of Little Rock and Hot Springs.

Appellant gave notice that it would present its application for temporary injunction to the district court, before three judges, on March 2, 1922; the hearing on its said application was had on March 6 and 7, but the final order of the three judges was not entered until June 6, 1922.

During all of said time from the 31st of December, 1920, to June 6, 1922, appellant was deprived of an increase in rates as provided for in the schedule filed with the Corporation Commission, and was compelled to continue service to the distributing companies under the percentage contract arrangement, whereby appellant sustained great loss arising from leakage in the plants of said distributing companies; and also during all of said time was compelled to serve its patrons in the several cities and towns supplied by it at the old rates.

Appellant's net operating revenue for and during said period, under the rates and practices prevailing as to said divisional contracts, which rates and practices it undertook to supersede by the schedule filed with the Corporation Commission on December 31, 1920, did not afford it a reasonable return on the fair value of its property devoted to and useful in the public service; that the net operating revenue for said period was in-

sufficient to take care of the reasonable depreciation of its plant and property used in the public service and to provide a fund for amortization of its investment; and that the gas fields in the State of Louisiana from which it obtains its supply of gas for sale and distribution in Arkansas are rapidly becoming exhausted, and without additional revenue appellant cannot carry on the necessary prospecting and drilling operations to insure the continuity of its service.

3. The three judges before whom the application for temporary injunction was heard, in an order made and entered by them on June 6, 1922, enjoined the appellee Arkansas Railroad Commission and the other appellees, other than Little Rock Gas & Fuel Company and Consumers Gas Company, from enforcing rates for gas furnished by appellant then in effect and from interfering with appellant in its right to establish other, higher and different rates for gas supplied to its patrons in the several municipalities, incorporated and unincorporated, in which appellant operates distributing systems; but denied the application of appellant for a temporary injunction against the appellees, Little Rock Gas & Fuel Company, Consumers Gas Company and Arkansas Railroad Commission with respect to gas supplied by appellant to said distributing companies,

and declined to enjoin said appellees from interfering with appellant in the establishment of city-border rates for gas obtained by said distributing companies from appellant for distribution in the cities of Little Rock and Hot Springs.

4. Being advised that it could not accept the benefits of said interlocutory order and at the same time appeal from that part of the order whereby the court refused to enjoin the appellees, Little Rock Gas & Fuel Company, Consumers Gas Company and Arkansas Railroad Commission, from interfering with appellant in the establishment of city or town-border rates for gas supplied to said distributing companies, appellant did not avail itself of the order of the said three judges as to the communities served by appellant direct and did not put into effect in said communities a new schedule of rates, but took an appeal, under the provisions of section 266 of the Judicial Code, from the entire order to this court.

Had appellant, under the terms of said order, put into effect other and higher rates in the municipalities where it serves its patrons direct through its own distributing plants, such increases in rates as it could reasonably make and retain the patronage of its consumers would not have afforded appellant any sub-

stantial relief or have increased its revenues so as to give it a reasonable return on the fair value of its property devoted to the public use, since 69 per cent of its operating revenue is derived from its proportion of the gas sales made by said distributing companies in the cities of Little Rock and Hot Springs, in which cities the volume of gas sold and distributed by said distributing companies is 72 per cent of the whole amount of gas sold and distributed by appellant in the State of Arkansas. That the loss by leakage in both of said cities for the year 1921, which loss is entirely borne by appellant under the percentage contracts with the distributing companies, amounted to more than nine hundred million cubic feet, and without relief against said loss by leakage and without an increase of the revenue derived from gas sold by appellant to said distributing companies appellant cannot earn a fair or adequate return on the value of its property devoted to the public service.

Appellant's property has been and will be continuously taken without just compensation by the maintenance in force during the pendency of this appeal of the percentage contracts under which appellant supplies gas to said distributing companies; that the loss, if continued over the period of time that will be required

to hear this case on the regular call of the docket, is so great as to endanger the ability of appellant to continue during all of said time the performance of its public duties in serving its own patrons and furnishing gas to said distributing companies for service to their patrons.

5. The purpose and intent of the provisions of the Judicial Code providing for appeals from interlocutory orders is to secure an early and speedy decision on the questions involved on such appeals, so that the cause may proceed in the trial court to a final hearing without unreasonable delay and without irreparable injury to parties litigant.

6. The advancing of the hearing of appellant's appeal from said interlocutory order so as to enable the trial court to proceed speedily to a final determination of the questions involved in appellant's suit is a matter of general public interest.

Wherefore, appellant prays that its appeal from said interlocutory order be given precedence in hearing and determination over all other than criminal causes pending in this court.

JOHN M. MOORE,

Attorney for Appellant.

FEB 19 1923

WM. H. STANBERG

(File No. 29060)

IN THE

United States Supreme Court

OCTOBER TERM, 1923.

ARKANSAS NATURAL GAS COMPANY *Appellant*,

v. *No. 500.*

ARKANSAS RAILROAD COMMISSION ET AL. *Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE EASTERN
DISTRICT OF ARKANSAS

APPELLANT'S REPLY BRIEF

J. M. Moon,
W. B. Smith,
Attorneys for Appellant.

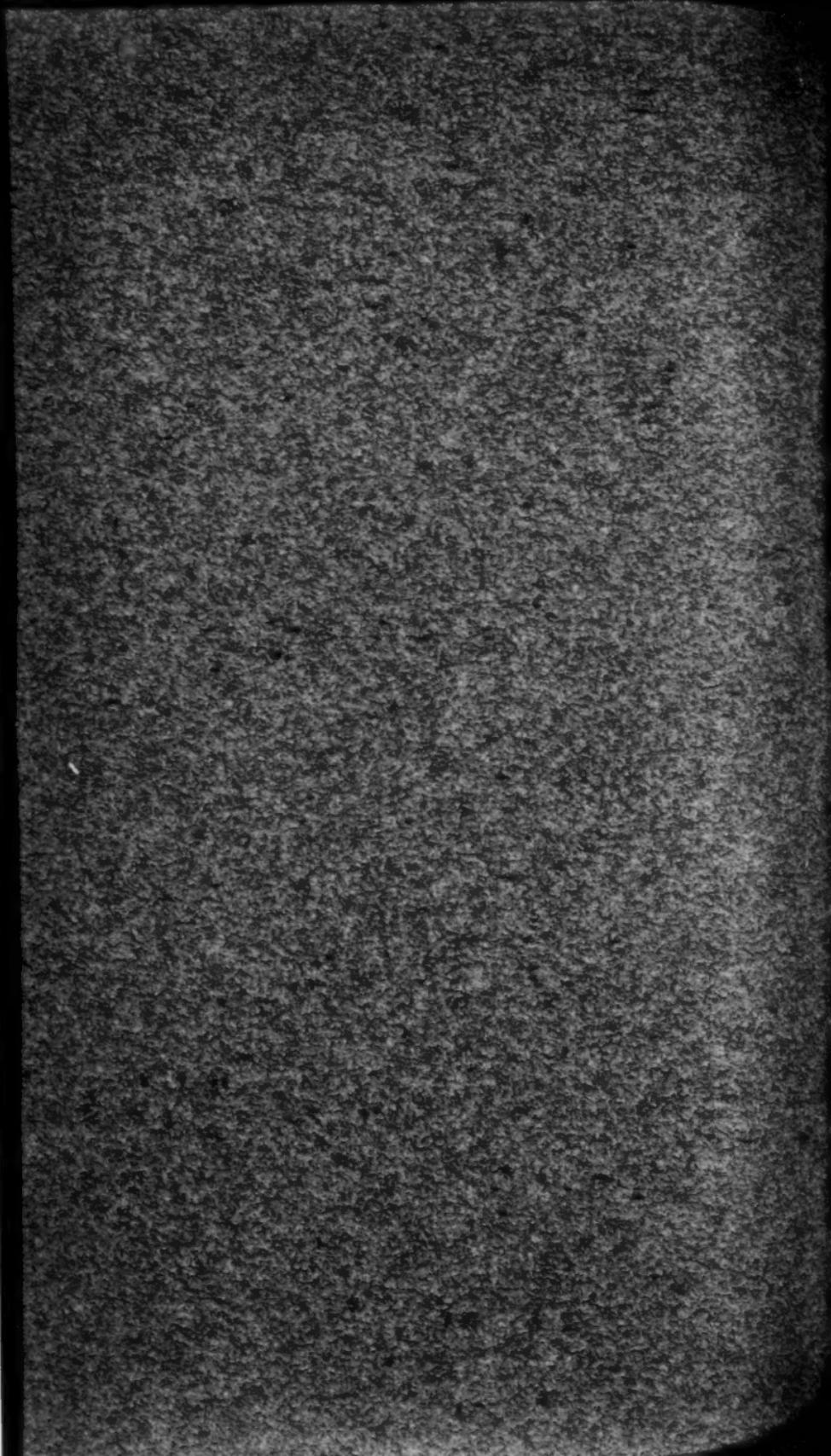
JOHN H. WELLS,

JOHN Q. WICKS,

J. MAXWELL MOON,

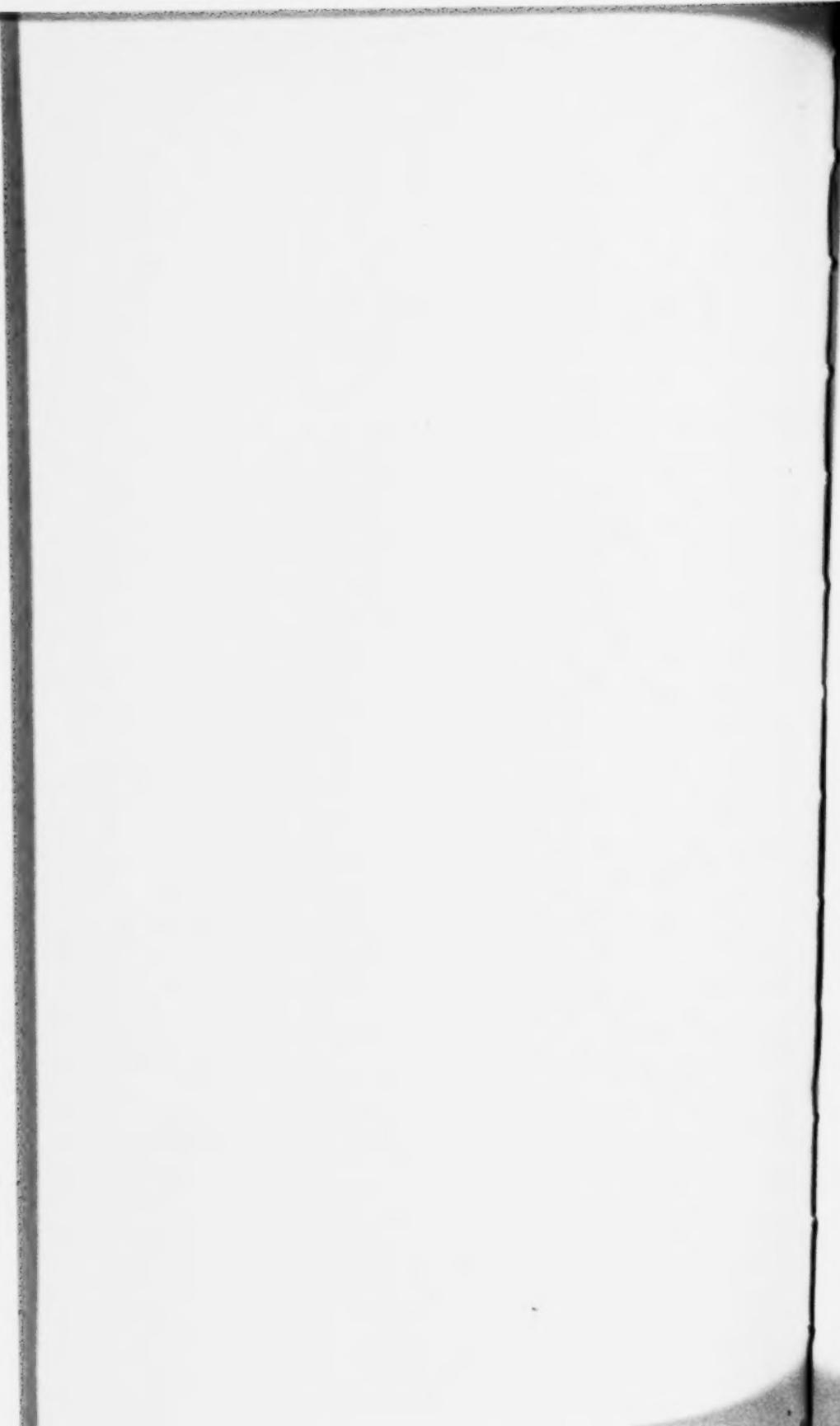
H. M. TURNER,

Of Counsel.



INDEX.

Appellant's Bill was not Premature.....	1
Appellant's Property is affected with a public use; and the Commission's jurisdiction, in the exercise of the State's reserved police power, to fix rates for Appellant, is unlimited	11
Cases—	
Board of Improvement Water Works Imp. Dist. v. Southwestern Gas & Electric Co., 121 Ark. 105.....	3
Clear Creek Oil Co. v. Fort Smith Smelter Co., 148 Ark. 265	12, 21
Citizens Passenger Ry. Co. v. Public Service Commission, 271 Pa. State, 39	20
German Alliance Ins. Co. v. Lewis, 233 U. S. 389.....	21
Johnson v. Wells-Fargo Co., 239 U. S. 242.....	4
Louisville & Nashville R. R. Co. v. Garrett, 231 U. S. 313.....	6
Love v. Atchison T. & S. F. Ry. Co., 185 Fed. 326.....	9
Martineau v. Clear Creek Oil & Gas Co., 141 Ark. 596.....	7
Missouri-Pacific R. R. Co. v. Conway County Bridge Dist., 134 Ark. 299.....	2, 7
Munn v. Illinois, 94 U. S. 126.....	23
Nowata County Gas Co. v. Henry Oil Co., 269 Fed. 742.....	20
North Carolina Public Service Co. v. Southern Power Co., 282 Fed. 837.....	21
Oklahoma Gas & Electric Co. v. Oklahoma Natural Gas Co., 205 Pac. 768.....	21
Prentis v. Atlantic Coast Line, 211 U. S.....	8
Producers Transportation Co. v. Railroad Commission of Calif., 176 Calif. 499.....	12
State v. Spokane & Inland Empire Ry. Co., 89 Wash. 599.....	12
Van Buren Water Co. v. Van Buren, 152 Ark. 89.....	2
Van Dyke v. Geary, 244 U. S. 47.....	23



(File No. 29050)

IN THE

United States Supreme Court

OCTOBER TERM, 1922

ARKANSAS NATURAL GAS COMPANY.....*Appellant*

v. No. 500.

ARKANSAS RAILROAD COMMISSION ET AL.....*Appellees*

APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE EASTERN
DISTRICT OF ARKANSAS.

APPELLANT'S REPLY BRIEF.

I.

Appellant's bill was not premature. Appellant was not required to prosecute an appeal from the Railroad Commission's order to the State Courts.

Counsel for appellees contend that the appeal to the courts from the Railroad Commission's orders provided for by the Railroad Commission Act involves something more than the exercise by the courts of

purely judicial functions, and that under the authority of the Prentis case, as a matter of comity, these remedies must be resorted to before the Federal Court will entertain a bill to enjoin the rates as confiscatory. While the decisions of the Supreme Court of Arkansas referred to by counsel are not harmonious in their interpretation of the powers of the courts on appeal from decisions of the Commission, Taxing Boards, etc., in none of the cases referred to was an issue made that the courts under the Constitution could not exercise legislative powers. Except for the dictum in the case of *Van Buren Water Company v. Van Buren*, 152 Ark. 83, 89, all of the decisions of the Supreme Court of Arkansas, both relating to appeals from the Commission Acts and from Assessment and Tax Boards, are referable to the judicial power of the Court to pass upon the authority of the Commission or Board and to determine whether the exercise of that authority was arbitrary. For instance, the court in the case of *Missouri Pacific Railroad Company v. Conway County Bridge District*, 134 Ark., 292, 299, held:

“The Board of Assessors had no right to arbitrarily fix a method of assessment which would not result in the ascertainment of the true benefits so as to work out uniformity in the assessments, but the judgment of the Board of Assessors must be respected by the courts, *unless it has been found that their action was arbitrary and had no reasonable basis.*”

In the above case the Court cited in support of this holding the case of *Board of Improvement Water*

Works Imp. Dist. v. Southwestern Gas & Electric Company, 121 Ark. 105, in which the Court said:

"It becomes necessary to consider whether or not the decree was correct in holding that the assessment fixed on that basis was arbitrary and not justified by the existing conditions as established by the evidence. It is claimed by appellees that the assessors did not attempt to make an assessment according to the benefits, but merely adopted an arbitrary method which disregarded the elements which go to make up benefits, and had no relation to the real benefit to the property from the proposed improvement. * * * * It is our duty, as before stated, *to accept as correct the assessment of the Board of Assessors unless it is affirmatively and satisfactorily shown that the assessment is incorrect.* *McDonald v. Improvement District*, 97 Ark. 334. The evidence in this case convinces us, however, that there has been no abuse of discretion or judgment by the assessors, and that *they have fairly exercised their judgment and arrived at an assessment which is reasonable* and which should not be overturned on the evidence adduced."

As stated, in none of the numerous cases in which the Supreme Court of Arkansas has reviewed the decisions of Commissions and Boards exercising legislative functions, under statutes providing for an appeal from the decisions of such Commissions and Boards to the courts, has the question as to whether the courts could act in a legislative capacity been raised. All of the decisions, as stated, may be harmonized upon the principle that the court acts in a judicial capacity in determining whether the Boards acted within their authority and on a reasonable basis. Until the direct

question has been raised none of the decisions are authoritative or binding upon this court. *Johnson v. Wells Fargo & Company*, 239 U. S. 234, 242.

In the Wells Fargo case a bill was filed in the Federal Court by the Wells Fargo Company to enjoin an assessment under a statute of the State of South Dakota which provided for the assessment of taxes upon express and sleeping car companies upon a different basis from that provided for the assessment of the property of individuals and corporations. The State Constitution provided:

"All taxes to be raised in this State shall be uniform on all real and personal property, according to its value in money, to be ascertained by such rules of appraisement and assessment as may be prescribed by the legislature by general law, so that every person and corporation shall pay a tax in proportion of the value of his, her or its property, and the legislature shall provide by general law for the assessing and levying of taxes on all corporation property as near as may be, by the same methods as are provided for assessing and levying of taxes on individual property."

This court held that the South Dakota constitutional provision had been violated by the Act of the legislature of South Dakota in providing a different method of assessment of the property of the express company from that of individuals and other corporations. It was contended that such a conclusion was contrary to the interpretation placed upon the statute by the Supreme Court of South Dakota. This court disposed of that question as follows:

"It is said that this conclusion is not consistent with the decision of the Supreme Court of South Dakota, construing its own constitution with final authority, in *State ex rel. American Express Company v. South Dakota*, 3 S. Dak. 338. In that case while the method of making assessments and valuations by the State Board was considered, and the court refused to interfere with such assessments under the circumstances shown, *there was no discussion or decision of the constitutionality of the Act when administered as in this case. In that case the constitutionality of the Act does not seem to have been raised.* In 34 S. Dak., 650, the judges of the Supreme Court of the State declined to give an opinion to the Governor as to the constitutionality of the law in question."

The making of rates for the future is clearly a legislative function and under the constitution of Arkansas, as quoted in our original brief, the three departments of government, executive, legislative and judicial, are separate, and "no person or collection of persons being one of these departments shall exercise any power belonging to either of the others."

The Legislature of 1921, creating the Railroad Commission, in Section 20 provided:

"The Court in reviewing the action of the Council or Commission shall hear evidence and determine what rates would afford the appellant reasonable and valid compensation for the services rendered, and shall enter an order setting out such rates and cause the same to be certified to the Council or Commission, and such Council or Commission shall thereupon fix such rates as shall be in conformity with the finding of the Court."

This section clearly directs the court on appeal to exercise the legislative function of rate-making, to de-

termine rates for the future, and to certify its decision down to the Commission or Council and require the Commission or Council to conform to said judgment and order. It is clearly a function that the courts cannot exercise under the Constitution, and the decision of the Arkansas Supreme Court in the Van Buren Water Works case, holding that "it was within the power and duty of the Circuit Court to fix such a rate according to the testimony in the record as would be reasonable and which would afford a just return upon the investment," falls within the rule enunciated by this Court in the Wells Fargo case as above quoted. The question of the constitutionality of that provision of the Act imposing legislative authority upon the courts was not decided in that case and has not been raised or decided by the Arkansas Supreme Court in any case. In the absence of a decision in a case where the constitutionality of the Act is challenged, this court, under the ruling in the Wells Fargo case, will decide for itself whether that provision of the Railroad Commission Act is in violation of the State Constitution.

The authority of the courts to review the decisions of Commissions and Boards is aptly expressed and clearly defined by this court through Mr. Justice Hughes in the case of *Louisville & Nashville Railroad Company v. Garrett*, 231 U. S. 298, 313.

After stating that the rate-making power of the Commission necessarily implies a wide range of legislative discretion and that so long as the legislative

action of the Commission is within its proper sphere, that the courts are not entitled to interpose and upon their own investigation of traffic conditions and transportation problems, to substitute their judgment with respect to the reasonableness of rates for that of the legislature or of the Railroad Commission, exercising its delegated power, he said:

"On these conditions being fulfilled, the questions of fact which might arise as to the reasonableness of the existing rates in the consideration preliminary to legislative action would not become, as such, judicial questions to be re-examined by the courts. The appropriate questions for the courts would be whether the Commission acted within the authority duly conferred by the legislature, and also, so far as the amount of compensation permitted by the prescribed rates is concerned, whether the Commission went beyond the domain of the State's legislative power and violated the constitutional rights of property by imposing confiscatory requirements."

This is exactly the principle upon which the Supreme Court of Arkansas in the case of *Missouri Pacific Railroad Company v. Conway County Bridge District, supra*, reviewed the assessment of the Board of Assessors. (134 Ark. 292, 299). Also the principle upon which the Supreme Court of Arkansas sustained the order of the lower court in enjoining the Arkansas State Tax Commission from certifying out an assessment made on an erroneous and false basis. (*Martineau v. Clear Creek Oil and Gas Co.*, 141 Ark. 596).

Mr. Justice Hughes in the Louisville & Nashville case, *supra*, took notice of the various state legislative

enactments providing for appeals from rate-making bodies, authorizing State judicial tribunals to investigate and decide questions which otherwise would not belong to them, and to act legislatively as in the Prentis case, where the constitution of the State permitted the exercise of legislative functions by the judicial department, his language being: "Undoubtedly, a State may permit appeals to its courts from the rate-making orders of its Railroad Commission and, upon the review of such orders, it may expressly authorize its judicial tribunals to investigate and decide questions which otherwise would not belong to them, or even to act legislatively (*Prentis v. Atlantic Coast Line, supra*)."

We do not understand Mr. Justice Hughes to have held that this judicial remedy, which many of the states have provided to avoid the contention that the hearings by the Commissions did not afford "due process of law" to the utilities sought to be regulated, requires the utilities to resort to the extra-judicial remedy provided before applying to a Federal Court of Equity for relief against confiscatory orders of the Commissions. The rule of comity adopted in the Prentis case was bottomed upon two facts: (1) That the order of the Commission was not the final legislative action and, (2) that the Railroad Company's property was not being confiscated pending the final rate-making decision, since the rates found by the Commission to be reasonable and warranted were not put into effect.

If the effect of the order had been to take the property or parts of property of the Railroad Company devoted to the public service without compensation during the rate-making process, then a Federal Court of equity would have had jurisdiction to have enjoined the confiscation, as aptly stated by Sanborn, Circuit Judge, in the case of *Love v. Atchison T. & S. F. Ry. Co.*, 185 Federal 321, 326:

"It never had held that citizens whose property had been and was continually being taken without just compensation, by the putting and maintaining in force under severe penalties of tentative confiscatory rates during the continuous process of rate-making, were thereby deprived of an immediate and plenary relief in the national courts from such a patent violation of the Fourteenth Amendment to the Constitution. *

* * * Railroad companies that have been, or will be deprived of parts of their property devoted to the public use of transportation, without just compensation during the continuance of the rate-making process, by provisions of a state constitution, or of a state law, or by orders of a state commission, prescribing tentative rates and putting them in effect during the rate-making process under severe penalties, may maintain suits for and obtain relief by injunction during the continuance of the rate-making process to the same extent that they may after the process is completed."

Appellant in its bill of complaint alleged:

"Complainant says that the said Arkansas Railroad Commission's order of September 3, 1921, operated and operates to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States, in that said Commission refused to

grant complainant a return on the then fair value of its property used and useful in the public service, but took less than the original cost thereof as the rate base, thereby leaving properties and values belonging to complainant and used and useful in rendering the public service upon which no return was provided to be given" (R. 30).

"Complainant says that the effect of maintaining in force the existing rates and of continuing to furnish gas to defendants, Little Rock Gas & Fuel Company, and the Consumers Gas Company, of Hot Springs, on a percentage division of collections whereby complainant sustains the entire loss of the leakage within the system of said distributing plants is to confiscate and destroy complainant's property; to destroy its ability to make extensions, develop new territory, bring in additional wells, or purchase gas and to continue to serve the public. Complainant says that said rates and charges are unreasonably low and unjust, and complainant in rendering the public service required of it under said schedule of rates will be yielding up and giving to the public its property and parts of its property without compensation; that said rates are unreasonable, arbitrary, confiscatory and have the effect of taking complainant's property without due process of law, and of denying it the equal protection of the law, in violation of the Fourteenth Amendment to the Constitution of the United States" (R. 32).

II.

Appellant's property used in producing, transporting and distributing gas, including the delivery of gas to the distributing companies, is affected with a public use. The Commission's jurisdiction is not limited, as contended by appellees, to the making of rates only for the ultimate consumers.

Counsel for appellees state their position with respect to the exercise by the Railroad Commission of the State's reserved police power in the matter of regulating rates as follows:

"It is our contention that one public utility receiving gas from another is not a part of the 'public' within the meaning of the statute; that the service thus rendered is not one authorized or required to be stated in the rate schedules; that contracts in respect of such service entered into prior to the passage of the Act are not subject to revision by the Commission; and, in short, that the service here involved to the Little Rock Company and the Consumers Company is not a public service over which the Commission is given jurisdiction." (Appellees' brief p. 35).

On page 36 of Appellees' brief counsel says: "A corporation becomes a public utility when it holds itself out as prepared, and is prepared to render service to the public, *but by 'the public' is meant the ultimate consumer.*"

Counsel quote from decisions of the States of Washington and California to support their conten-

tion. The Supreme Court of Arkansas, in the case of *Clear Creek Oil Co. v. Fort Smith Smelter Co.*, 148 Ark. 260, 265, disposed of the California case as follows:

"We have not overlooked the decision of the Supreme Court of California in the case of *Allen v. Railroad Commission*, 175 Pac. 466, cited and relied on so confidently by learned counsel for appellees. We do not, however, think that that case is at all controlling in the present case. There was no indication in that case of the intention on the part of the Court to impair the effect of the previous decision in the case we have cited (*Producers Transportation Co. v. Railroad Commission of Cal.*, 176 Cal. 499). In that case there were private contracts intended as merely conferring private water rights to numerous parties, and the only circumstance which tended to establish the corporation under consideration as a public utility was the fact that it had been furnishing water to a small town or village which consumed less than three per cent of the volume of water handled by the company. The Court held that under the facts of that case there was no dedication of the bulk of the water handled to the public use. There was no element in that case, as was in the previous decision of that court cited (*Producers Transportation Co. v. Railroad Commission of Cal.*), and in the present case, of the corporation having accepted the terms of a statute which necessarily made it a public service one."

The Washington case cited by counsel, *State v. Spokane & Inland Empire Railroad Co.*, 89 Wash. 599, turns upon the peculiar facts in that case. The power company simply made private sales of surplus power not at the time needed for the discharge of its public duties, and the Court took the view that the Commiss-

sion in the exercise of the police power delegated to it did not have jurisdiction over that private business. The distinction between the Washington case and the case at bar lies in the fact that appellant in the beginning of its business voluntarily devoted its property to the public use; that its pipe line was constructed into the State of Arkansas for the express purpose of wholesaling and retailing gas; and that its contracts made in advance with the distributing companies were made in connection with its general undertaking to supply the public in Arkansas tributary to the pipe line to be constructed with natural gas. At the time appellant was negotiating its contracts for wholesaling of gas to the distributing companies, it was obtaining franchises from the communities that it now serves, and the distributing companies had full knowledge, as shown by recitals in the contracts made with them, of appellant's devotion of its property to the public use.

In our original brief we have shown the necessity of the exercise by the Commission of the police power in the fixing of rates for gas sold to the distributing companies as well as to the ultimate consumers in order to prevent unjust and discriminatory rates. We did not, however, call attention to a fact that we now call attention to, that the business of appellant in supplying gas to the distributing companies and the ultimate consumers is an indivisible business. The gas is brought into Arkansas from the compressing plant at Lewis, Louisiana, through one main pipe line, and no

part of the gas is, or in its nature can be set apart for the distributing companies; it is all commingled. The same compression is required to furnish the gas to the ultimate consumer supplied by appellant as to furnish it to the distributing companies. The same service in maintenance and operation of lines. The gas is all produced from the same wells and in the same areas. The cost of furnishing it to the distributing companies becomes a part of the cost of furnishing it by appellant to its own ultimate consumers. Its business is such that it cannot practically or theoretically be separated. No part of its property can be allocated strictly to the service of furnishing gas to the distributing companies. The contract with the Little Rock Company, among other things recites that:

"Whereas, the said Arkansas Company represents that it has likewise under its *charter powers and franchises* a lawful right, among other things, to acquire, operate for, produce, transport, pipe, deal in, furnish, supply and sell natural gas to all and all manner of patrons and consumers and for such purposes has and holds certain lands and natural gas wells located in the Parish of Caddo, in the State of Louisiana, and elsewhere from which it desires to furnish natural gas to the said Pulaski Company (the predecessor of the Little Rock Company) for distribution to the Cities of Little Rock and Argenta, and to and among its patrons and consumers within the said Cities of Little Rock and Argenta, and their environs, and the said Pulaski Company is willing thereto." (R. 36).

The seventh paragraph of the contract is as follows:

"That these presents are made and accepted with full knowledge and notice of, and expressly subject to all and singular such duties as the said Arkansas Company may owe in other areas of consumption than those hereinabove set forth, but never in such a way or manner as to permit of discrimination against the said Pulaski Company, nor in any manner as to relieve said Arkansas Company from the full exercise and effort on its part at all times to drill and develop wells in its said gas territory, and furnish and supply the said Pulaski Company its requirements of natural gas, and which said Arkansas Company hereby expressly agrees to do." (R. 38).

A clause in Section 8 of the contract provides:

"It is further provided always in this behalf, in the event of a partial failure of a sufficient supply of natural gas for all purposes, that the said Pulaski Company shall shut off all manufacturing consumers, or sufficient of them to keep up an adequate supply for domestic consumers."

The above clause and the tenth clause which we shall now quote, show the intimate connection of the producing company with the sale and distribution of the gas by the distributing companies, and that the contracts were made with reference to the other obligations of appellant to supply gas in communities where it had obtained franchises. The tenth clause is as follows:

"That all contracts proposed in good faith, unless covered by general form already agreed upon, for the

supply of natural gas to consumers, whether domestic or manufacturing, shall, before execution and delivery, be submitted to the said Arkansas Company by the said Pulaski Company, and in the event of disapproval of any such contract or contracts by the said Arkansas Company, no natural gas shall be furnished therefor under these presents, but the said Pulaski Company may obtain natural gas for such a contract from other sources." (R. 39).

The contract with the Hot Springs Company, now the Consumers Gas Company, contains similar clauses.

Appellant alleged in its bill of complaint, and the allegation was not denied by the answers of any of the parties, the following:

"Complainant is a corporation duly organized and existing under the laws of the State of Delaware and is engaged as a *public utility* in the business of producing and supplying natural gas to the defendants, City of Pine Bluff, Town of Sheridan, Town of Alexander, City of Benton, Town of Haskell, City of Malvern, City of Arkadelphia, Town of Gurdon, City of Prescott, Town of Emmett, City of Hope, Town of Garland, Town of Fouke, Town of Traskwood, and to its patrons and consumers in the aforesaid cities and town; *to the defendants, Little Rock Gas & Fuel Company and Consumers' Gas Company*; and to its patrons and consumers in the unincorporated towns of Mablevale, Bryant, Bauxite, Gifford, Perla, Donaldson, Gum Springs, Boughton, Bierne and Doddridge, all in the State of Arkansas." (R. 1-2).

Appellant's bill of complaint also contained the following allegations, none of which were denied by the answers, viz:

1. "It was the opinion of the best gas experts and geologists in the country that the natural gas supply in the aforesaid area was practically inexhaustible, and, if commercialized by the building of gas pipe lines for its transportation and distribution to distant communities, would produce a large profit to the owners. *Complainant was organized primarily for the purpose of acquiring said rights and engaging in the natural gas business;* but, before entering upon financial arrangements to construct a pipe line for the delivery of the gas to Arkansas communities, it caused an exhaustive investigation as to the possibilities of said field to be made by men who had had many years' experience in the natural gas business. The investigators reported to complainant that the gas field gave evidence of being the best that had been developed in the United States, and of having practically an inexhaustible supply, and would justify the large expenditure necessary for the distribution of the gas produced in said field at points in Arkansas as far north as Little Rock, Hot Springs and Pine Bluff." (R. 3-4).

2. "*Upon receiving this report, complainant took the necessary steps to raise the money to construct an adequate pipe line system for the sale of gas produced in said field to Arkansas communities, including the City of Little Rock, and began the negotiation of contracts for the sale of gas to be distributed in the cities of Little Rock and Hot Springs.*" (R. 4).

3. "*Complainant, during the time it was negotiating with the Pulaski Company for the distribution by said company of gas to the inhabitants of the cities of Little Rock and Argenta, was also negotiating for*

and obtaining franchises in said towns and cities for the sale and distribution of gas in the several towns and cities between the city of Little Rock and the Arkansas-Louisiana State line. At the same time, complainant took up negotiations with the Hot Springs Gas Company for the distribution of gas by said company in Hot Springs and its environs, but the same were not concluded and a contract consummated until some months later; but, complainant having made arrangements for the sale of gas to the Pulaski Gas Light Company for the cities of Little Rock and Argenta, and, having obtained franchises for the sale and distribution of gas in towns and cities in Arkansas, along the projected pipe line between Little Rock and the Arkansas-Louisiana line, began the construction of its pipe line system, the southern terminus being at Lewis, Louisiana, where it located its compressing station, known as the Rogers Station." (R. 7-8).

4. "Complainant, for the purpose of carrying on its business in Arkansas, owns and uses property in Louisiana and Arkansas consisting of gas leases and gas wells, gas gathering lines, transmission lines and systems, compressing stations, regulator stations, rights-of-way, distributing lines and systems, and many other items of property both real and personal." (R. 9).

Counsel for appellees in support of their contention that appellant is not a public service corporation, say that it cannot exercise the power of eminent domain since it is a foreign corporation. It is our opinion that the right to exercise the power of eminent domain is not at all decisive of the question as to whether appellant's property is affected with a public use. The right of eminent domain was exercised

through a subsidiary company which was later consolidated with appellant, and through this subsidiary company, the Arkansas Pipe Line Company, contracts for laying the pipe line along and across public highways were also obtained from county courts. The three judges before whom the temporary application was made, before proceeding with the evidence, required counsel to argue the questions of law involved. No question was raised, either by counsel for appellees or the judges, as to the lack of authority of the Railroad Commission to make rates for gas sold to the distributing companies upon the ground that the gas delivered to the distributing companies was an article in interstate commerce of national character and not subject to local regulation. The judges, having heard the arguments, directed that appellant should proceed with its evidence, and naturally under the issues as made, appellant did not undertake to go into the facts above stated with respect to the original construction of its lines, which could have been shown had it been deemed pertinent to the issues, and which appellant now stands ready to show on remand of the case if this court deems that fact essential.

Other cases referred to by counsel for appellee are not at all in point. Naturally, a Commission would not assume jurisdiction to fix rates for a mutual telephone company organized to render service only to the individual subscribers, each of whom contributed pro rata to the expenses of the corporation, as the public would in no way be interested in the operation.

Counsel quote from the case of *Nowata County Gas Co. v. Henry Oil Company*, 269 Fed. 742, as sustaining their contention that the contracts between appellant and the distributing companies were private contracts not subject to be changed by the Railroad Commission in the exercise of the police power. The case is not in point. The Henry Oil Co. was not engaged in public utility service at all. It was simply a producer, drilling wells and selling its gas at the wells to transportation and distributing companies. The production of gas is purely a private business and because the Henry Oil Co. was not engaged in public service the Court held that the Oklahoma Corporation Commission had no authority to fix the rates that were to be charged by it to the several transportation and distributing companies for gas sold to them. The question was disposed of by the Court in the following language:

“The commission had authority to fix the rates to be paid by the plaintiff for gas furnished it by defendant, notwithstanding the contract, if the defendant, the Henry Oil Company, in supplying gas to the plaintiff *was acting in the capacity of or exercising the function of a public utility.* The expression of ‘public utility’ characterizes the business rather than the owner of the business, and in order that a business shall be a public utility it must in some way be impressed with a public interest.”

It is very clear under the facts set out in the case of *Citizens Passenger Railway Co. v. Public Service Commission*, 271 Pa. St. 39, that the question of the

power of the Commission to abrogate lease contracts was not involved. The lease contracts as existed in that case had no relation to any of the elements that were necessary to be considered in revising the rates.

Counsel for appellees, after making their argument on the narrow and restricted ground that the Commission's jurisdiction is limited to making rates only for the ultimate consumer, cite the following cases which nullify their argument and place the question upon the broad ground that, if the utility is affected with a public interest, the Commission may, in fixing rates for private consumption, or for sale of gas to other utility companies, disregard the utility company's private contracts or arrangements, viz:

Clear Creek Oil & Gas Co. v. Fort Smith Smelter Co., 148 Ark. 260, *N. C. Public Service Co. v. Southern Power Co.*, 282 Fed. 837, *Oklahoma Gas & Electric Co. v. Oklahoma Natural Gas Co.*, 205 Pac. 768. Also they cite the case of *German Alliance Insurance Co. v. Lewis*, 233 U. S. 389.

In the latter case the court said:

"We may put aside, therefore, all merely adventitious considerations and come to the bare and essential one, whether a contract of fire insurance is private and as such has constitutional immunity from regulation. Or, to state it differently and to express an antithetical provision, is the business of insurance so far affected with a public interest as to justify regulation of its rates? And we mean a broad and definite public interest. In some degree the public interest is

concerned in every transaction between men, the sum of the transactions constituting the activities of life. But there is something more special than this, something of more definite consequence, which makes the public interest that justifies regulatory legislation. We can best explain by examples. The transportation of property—business of common carriers—is obviously of public concern and its regulation is an accepted governmental power. The transmission of intelligence is of cognate character. There are other utilities which are denominated public, such as the furnishing of water and light, including in the latter gas and electricity. We do not hesitate at their regulation, nor at the fixing of the prices which may be charged for their service. The basis of the ready concession of the power of regulation is the public interest * * * * It is said the State has no power to fix the rates charged to the public by either corporations or individuals engaged in a private business, and the "test of whether the use is public or not is whether a public trust is imposed upon the property, and whether the public has a legal right to the use which cannot be denied"; or, as we have said, quoting counsel, 'where the right to demand and receive service does not exist in the public, the correlative right of regulation as to rates and charges does not exist.' Cases are cited which it must be admitted support the contention. *The distinction is artificial.* It is, indeed, but the assertion that the cited examples embrace all cases of public interest. The complainant explicitly so contends, urging that the test it applies excludes the idea that there can be a public interest which gives the power of regulation as distinct from a public use, which, necessarily, it is contended, can only apply to property, not to personal contracts. The distinction, we think, has no basis in principle (*Noble State Bank v. Haskell*, 219 U. S. 104), nor has the other contention that the service which cannot be demanded cannot be regulated."

So it was held in *Van Dyke v. Geary*, 244 U. S. 39, 47, that the character and extent of the use is the test as to whether the public have an interest so that it is subject to the regulatory power of Commissions.

It was held in *Munn v. Illinois*, 94 U. S. 113, 126, that: "Property does become clothed with a public interest when used in a manner to make it of public consequence, and affecting the community at large."

Respectfully submitted,

J. M. MOORE,

W. B. SMITH,

Attorneys for Appellant.

JOHN S. WELLER,

JOHN O. WICKS,

J. MERRICK MOORE,

H. M. TRIEBER,

Of Counsel.

ARKANSAS NATURAL GAS COMPANY *v.* ARKANSAS RAILROAD COMMISSION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF ARKANSAS.

No. 500. Argued February 21, 1923.—Decided March 19, 1923.

1. The power of a State to abrogate private contracts touching the rates of public utilities exists only as an incident to the regulation of such utilities and their rates in the public interest. P. 382.
2. A statute will be construed if possible to uphold it as constitutional. P. 383.
3. A statute of Arkansas, transferring to the Railroad Commission jurisdiction formerly possessed by the Corporation Commission, including pending cases, but denying power to modify or impair existing contracts for supplying natural gas, *construed* as not singling out a particular gas company whose claim, that divisional rates fixed by contract between it and distributors were inadequate, was pending before the latter Commission. *Id.*
4. An exception in a statute will not be taken as intended and operating to work an arbitrary discrimination against a particular party, when it may be construed as a general one and nothing appears to prove either that there are not other cases within its purview or that it is based on arbitrary classification. P. 384.

Affirmed.

APPEAL from a decree of the District Court denying, in part, an application for a preliminary injunction.

Mr. W. B. Smith, with whom *Mr. J. M. Moore*, *Mr. John S. Weller*, *Mr. John O. Wicks*, *Mr. J. Merrick Moore* and *Mr. H. M. Trieber* were on the briefs, for appellant.

Mr. E. J. Dimock and *Mr. Ashley Cockrill*, with whom *Mr. Henry M. Armistead*, *Mr. Max Pam*, *Mr. Harry*

Opinion of the Court.

261 U.S.

Boyd Hurd, Mr. William H. Martin and Mr. Lewis L. Delafield were on the briefs, for appellees.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

The appellant brought suit in the District Court, alleging that an order of the Arkansas Railroad Commission was invalid as establishing confiscatory rates for natural gas furnished to its consuming customers and as maintaining certain divisional rates, (alleged to be wholly inadequate) fixed by contracts between appellant and the Little Rock Gas & Fuel Company and the Consumers' Gas Company. An interlocutory injunction was sought under § 266 of the Judicial Code. The court granted the injunction in respect of the rates to consumers but denied it as to the divisional rates. The appeal brings here for review only the action of the lower court in the latter respect.

By the divisional contracts referred to, appellant, in consideration of the payment to it of a stated proportion of the rates collected, agreed to furnish gas to the two companies named, to be by them distributed to their customers in the cities of Little Rock and Hot Springs, respectively. The gas was to be delivered at the intake of the distributing systems for these cities. Appellant asserts that the income afforded by the rates prescribed by these contracts is so inadequate as to have the effect of a virtual confiscation of its property, and that this result is in large part due to improper and wasteful methods of distribution on the part of the two distributing companies.

The Commission was asked to fix a flat rate, called a city gate rate, for the gas delivered at the city borders, the effect of which, of course, would have been to abrogate the contract rates based upon a percentage of the collections. Appellant's application was made to the Arkansas Corporation Commission, but was decided by the Railroad

Commission, to whom the Legislature in the meantime had transferred jurisdiction. There is no claim that rates to consumers were affected by these contracts; nor does it appear that the public interest is involved in the action which the Commission was asked to take.

The Railroad Commission denied the application primarily upon the ground that the power to grant it had been expressly withheld by the act of the Legislature, known as Act 443, passed on March 25, 1921 (Acts of Arkansas, 1921, p. 429), transferring to it the jurisdiction theretofore possessed by the Corporation Commission, and providing that the Railroad Commission "shall have no jurisdiction or power to modify or impair any existing contracts for supplying gas to persons, firms, corporations, municipalities or distributing companies, and such contracts shall not be affected by this act or the act of which this is an amendment." The act is copied in the margin.¹

¹ "All records, papers, furniture and stationery under the control of the Arkansas Corporation Commission at the time of the passage of the act of which this is an amendment, shall be turned over to the Arkansas Railroad Commission and remain in its custody, and all investigations, proceedings and hearings that were pending before the Arkansas Corporation Commission at the time of the passage of the act of which this is an amendment, and the hearings of which are embraced within the powers conferred on the Arkansas Railroad Commission, shall be transferred to the Arkansas Railroad Commission for such consideration, orders and determination as may be made by it under the terms of the act of which this is an amendment, and the petitions pending before the Arkansas Corporation Commission at the time of the passage of the act of which this is an amendment, involving regulations of service and rates for natural gas, and numbered 417, 418 and 423 on the records of said Arkansas Corporation Commission, are transferred to the Arkansas Railroad Commission for decision and the making of such orders and rates as may be appropriate, and the Arkansas Railroad Commission shall consider the testimony that has heretofore been taken in said cases and hear such further testimony as may be appropriate to fully present such

Opinion of the Court.

261 U.S.

The question whether, in the absence of the statute—it being made to appear that the stipulated consideration was grossly inadequate—the commission, under the circumstances disclosed by the record, would have been under a duty to fix gate rates in contravention of the contracts, may be put aside with brief consideration. While a State may exercise its legislative power to regulate public utilities and fix rates, notwithstanding the effect may be to modify or abrogate private contracts (*Union Dry Goods Co. v. Georgia Public Service Corp.*, 248 U. S. 372, 375; *Producers Transportation Co. v. Railroad Comm.*, 251 U. S. 228, 232) there is, quite clearly, no principle

cases, and such orders and rates as may be made by the Arkansas Railroad Commission in the said gas cases shall apply not only to the service outside of municipalities, but also to the service and rates for supplying natural gas within municipalities or to distributing companies operating within such municipalities, except that the Arkansas Railroad Commission shall have no jurisdiction or power to modify or impair any existing contracts for supplying gas to persons, firms, corporations, municipalities or distributing companies, and such contracts shall not be affected by this act or the act of which this is an amendment.

"From the decisions of the Arkansas Railroad Commission in such cases appeals may be prosecuted to the circuit court and Supreme Court, and such appeals shall be taken, proceeded in, heard and disposed of as provided in sections 20 and 21 of the act of which this is an amendment; *provided, however*, that on the determination of such natural gas cases by the Arkansas Railroad Commission and the decision on any appeals therefrom and the making of orders by the commission in pursuance to orders of the court made on such appeals, the powers and jurisdiction of the Arkansas Railroad Commission to regulate these particular utilities and fix their rates shall be such only as is conferred by other sections of the act of which this is an amendment. In all cases where the Arkansas Corporation Commission made a final decision or order before the act of which this is an amendment became effective and the time for an appeal has not elapsed, any party to said proceedings shall have the right to have the matter heard on appeal as is provided in sections 20 and 21 of the act of which this is an amendment."

which imposes an obligation to do so merely to relieve a contracting party from the burdens of an improvident undertaking. The power to fix rates, when exerted, is for the public welfare, to which private contracts must yield; but it is not an independent legislative function to vary or set aside such contracts, however unwise and unprofitable they may be. Indeed the exertion of legislative power solely to that end is precluded by the contract impairment clause of the Constitution. The power does not exist *per se*. It is the intervention of the public interest which justifies and at the same time conditions its exercise.

But the appellant contends that the statute violates the Fourteenth Amendment because it imposes restrictions upon the rate-making power of the commission in respect of the particular contracts of appellant here involved, which, it is said, are not imposed in the case of contracts of other utility corporations. In other words, it is urged that the act singles out the appellant for special restraint in this respect and is, therefore, unequal. While its meaning is not free from doubt, we do not so construe the act. The rule is fundamental that if a statute admits of two constructions, the effect of one being to render the statute unconstitutional and of the other to establish its validity, the courts will adopt the latter. *St. Louis Southwestern Ry. Co. v. Arkansas*, 235 U. S. 350, 369. The language of this act is general. By its terms jurisdiction over all proceedings and hearings then pending before the Corporation Commission is transferred to the Railroad Commission. There follows a provision particularizing certain petitions numbered 417, 418 and 423, being the cases of appellant, as to which the Railroad Commission is directed to consider the testimony theretofore taken by the Corporation Commission and to hear such further testimony as may be appropriate to fully present such cases. The paragraph then concludes with

Opinion of the Court.

261 U. S.

the exception, already quoted, to the effect that the Railroad Commission shall have no power to modify or impair existing contracts for supplying gas, etc. Considering the several provisions of the act together, its terms fairly justify the conclusion that the exception was meant to apply to all proceedings pending before the Corporation Commission transferred to the Railroad Commission and not alone to the three specified cases. The record contains nothing to indicate the character or number of these proceedings and nothing to suggest that their grouping or subjection to the rule of the exception constitutes an unreasonable or arbitrary classification. The reasons which influenced the classification are not disclosed on the face of the act, but the mere absence of such disclosure will not justify the Court in assuming that appropriate reasons did not in fact exist. The presumption is that the action of the legislature—which applies alike to all falling within the class—was with full knowledge of the conditions and that no arbitrary selection of persons for subjection to the prescribed rule was intended. See *Atchison, Topeka & Santa Fe R. R. Co. v. Matthews*, 174 U. S. 96, 106.

The state legislature is vested with a wide discretion in the matter and interference by this Court may not be had merely because its exercise has produced inequality—every selection of subjects or persons for governmental regulation does that—but only where it has produced an inequality which is actually and palpably unreasonable and arbitrary. See *Bachtel v. Wilson*, 204 U. S. 36, 41; *Orient Insurance Co. v. Daggs*, 172 U. S. 557, 563; *Erb v. Morasch*, 177 U. S. 584, 586; *Missouri, Kansas & Texas Ry. Co. v. May*, 194 U. S. 267, 269; *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 293; *Heisler v. Thomas Colliery Co.*, 260 U. S. 245.

Applying the rule established by these and other decisions of this Court, the decree below is

Affirmed.